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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 79.

PETER GRAFFAM AND HERBERT F. DOBLE,
APPELLANTS,

vs.

CHRISTINE J. BURGESS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 9, 1882.

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1 UNITED STATES OF AMERICA, } ss:
Massachusetts District, }

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Monday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and eighty-two.

Before the Honorable Horace Gray, associate justice, and the Honorable John Lowell, circuit judge.

CHRISTINE J. BURGESS, Complainant, }
v. } In Equity.
PETER GRAFFAM *et al.*, Defendants. }

2 The bill of complaint in this cause was filed in the clerk's office on the tenth day of July, A. D. 1880, and was duly entered at the May term of this court, A. D. 1880, and is in the words and figures following, namely:

Bill of Complaint. Filed July 10, 1880.

To the honorable the justices of the circuit court of the United States, now sitting in Boston, within and for the district of Massachusetts:

The bill of complaint of Christine J. Burgess, of the city and county of Providence, in the State of Rhode Island, a citizen of said Rhode Island, complainant, against Peter Graffam, Samuel M. Fairfield, and Edward B. Newhall, of Malden, in the county of Middlesex, Commonwealth of Massachusetts; L. Thomas Freeman, Warren Elliott, William Hallahan, and Moses F. Eastman, all of Melrose, in said county of Middlesex; and William C. Dillingham, of Everett, in said county of Middlesex, and all citizens of said district of Massachusetts, respondents.

Your oratrix respectfully shows that on the twenty-third (23) day of January, one thousand eight hundred and seventy-nine, and for a long time prior thereto, she was and had been seized in her own right of the piece of real estate, with the land and buildings thereon, situated in the town of Melrose, in said county of Middlesex, and bounded and described as follows: Beginning at the junction of Emerson and Myrtle streets and thence running south seventy-six (76) degrees east one hundred and twelve (112) feet on said Emerson street, thence south nineteen (19) degrees west one hundred and seventy (170) feet on the land now formerly of John
3 Shelton, thence north seventy-six (76) degrees west one hundred and twenty-one (121) feet eight (8) inches to said Myrtle street, thence northerly by said Myrtle street one hundred and seventy (170) feet to the point of beginning, containing about nineteen thousand eight hundred and fifty (19,850) square feet; that she paid therefor in one thousand eight hundred and sixty-one (1861) the sum of forty-four hundred (4400) dollars; that said building consisted of a large two-story wooden house of twelve rooms, with all modern conveniences; that she used said property as a residence

for herself until about the nineteenth (19) day of February, A. D. one thousand eight hundred and sixty-eight (1868), when she was married to Horace Clark Burgess, then and now of the city of Providence, and that since the said nineteenth (19) day of February, one thousand eight hundred and sixty-eight (1868), she has resided in said Providence with her said husband; that she occupied said premises for the purposes of a summer residence during a part of the year one thousand eight hundred and seventy-eight (1878), prior to the first day of December, in said year; that while so residing in said house she employed the respondent, Peter Graffam, during the months of October or November, or thereabout, as a mason to do work, this complainant furnishing the material and a helper for the rebuilding of the chimneys of said house from the attic floor; that said respondent Graffam performed said labor in an unworkmanlike manner, resulting in great damage to this complainant, in consequence of which this complainant refused to pay said Graffam the sum of about twenty-three (23) dollars claimed by him as due him for labor in reconstructing said chimneys as aforesaid; that said Graffam, in consequence of the refusal of this complainant to pay said bill, as this complainant is informed, did, on the twenty-third (23) day of January, A. D. one thousand eight hundred and seventy-nine (1879), employ the respondent, Samuel M. Fairfield, an attorney-at-law, residing in said Malden, and caused this complainant to be sued by virtue of a writ issued out of this district court for the first district of Middlesex county, and on the twenty-fourth (24) day of January, A. D. one thousand eight hundred and seventy-nine (1879), caused said real estate to be attached on mesne process by the re-
4 spondent Dillingham, a deputy sheriff; that said writ was duly entered in said district court holden at Malden; that this complainant was defaulted, and on March tenth (10), eighteen hundred and seventy-nine (1879), judgment was entered against her for the sum of twenty-eight $\frac{95}{100}$ dollars damages, and sixteen $\frac{15}{100}$ dollars costs. That thereafterward, on the twenty-first (21) day of March, A. D. eighteen hundred and seventy-nine (1879), execution issued, which was placed in the hands of respondent, William C. Dillingham; that said Dillingham, without due process of law, seized and took, as he now alleges, by virtue of said execution, all the title and interest of this complainant, Christine J. Burgess, in and to said real estate, which she had on said twenty-fourth (24) day of January, A. D. eighteen hundred and seventy-nine (1879), and caused the same to be sold at a public auction, without notice to this complainant, or to any tenant, agent or attorney of this complainant, and without proper or legal publication of said proposed sale, and by virtue of said illegal proceedings, said Dillingham alleges that he sold said real estate to the respondent, Peter Graffam, on the seventeenth (17) day of May, A. D. eighteen hundred and seventy-nine (1879), at ten (10) o'clock a. m., at his office in Hill's building, so called, on Main street, in the said town of Malden, adjoining said town of Melrose, where said property is situated; that at said sale Peter Graffam, the respondent, the creditor named in said execution, being the highest bidder, purchased said property for the sum of seventy-

three $\frac{10}{100}$ dollars, as is alleged by said Dillingham, and that said Dilligham thereupon executed to the said Graffam a deed of said real estate, a copy whereof is annexed to this bill of complaint, made part thereof and marked "Exhibit A."

And this complainant further showeth that on said twenty-third (23) day of January, A. D. eighteen hundred and seventy-nine (1879), the respondent, Edward B. Newhall, of said Malden, a person who alleges that he is engaged in business as a real estate agent in said Malden and in Boston, claiming and pretending that this complainant owed him a debt of thirty (30) dollars, also employed said respondent Fairfield as an attorney and caused said real estate to be attached on said twenty-fourth (24) day of January, by virtue of a writ issued out of the said first district court of the eastern
5 district of Middlesex, wherein said Edward B. Newhall was plaintiff and the complainant was defendant.

That said writ was placed in the hands of said Dillingham as deputy sheriff; that he attached, as he alleges, all the right, title, and interest of this complainant in said real estate and returned that he had made dilligent search for the within-named Christine J. Burgess for her last and usual place of abode, and for her tenant and attorney, and could not find either within his precinct, and further returned that he was satisfied that she had none in the State known to him, all of which fully appears by a certified copy of the writ and officer's return thereon. That said writ was duly entered in said court and judgment was also entered upon the default of this complainant on the said tenth (10) day of March, A. D. one thousand eight hundred and seventy-nine (1879).

That thereafter the said respondent Newhall, by his attorney, the said Fairfield, caused an execution to issue out of said court, and placed in the hands of said Dillingham; and on the third (3) day of June the said Dillingham, as a deputy sheriff, pretending to act by virtue of said execution, seized and took, as he alleges, all this complainant's right, title, and interest which she had then remaining after the sale to the said Graffam on the seventeenth (17) day of May hereinabove referred to, and on the thirteenth (13) day of August, by an adjournment from the ninth (9) day of August at his office on Main street, in said Malden, did, without due process of law, sell to the said Edward B. Newhall, for the sum of eighty-one $\frac{21}{100}$ dollars, all the remaining interest of this complainant in said real estate so sold to said Graffam, and thereafter executed to said Newhall a deed of same, a copy of which deed is hereto annexed and marked "Exhibit B," and made a part of this bill of complaint.

That said deed was duly acknowledged on the twenty-sixth (26) day of September, and recorded on the twenty-fourth (24) day of October, A. D. one thousand eighteen hundred and seventy-nine (1879), at the registry of deeds, at East Cambridge, as fully appears by said copy.

And this complainant further showeth that the said Peter Graffam,
on the said twenty-third (23) day of January, A. D. one
6 thousand eight hundred and seventy-nine (1879), had not any lawful claim against this complainant; that he was fully ad-

vised of the fact that this complainant had been subjected to large damages on account of the unworkmanlike manner in which he had performed said work upon said house in Melrose, and that he had no lawful claim against this complainant in consequence thereof.

And this complainant further showeth that the said Edward B. Newhall, on the said twenty-third (23) day of January, A. D. one thousand eight hundred and seventy-nine (1879), well knew that he had no lawful claim against this complainant; that he had seen, or had the opportunity of seeing, this complainant for a period of more than four years prior to said twenty-third (23) day of January, during which time this complainant had at all times *had* ample means to pay said debt, but that said Newhall had never pressed the same, or undertaken to collect the same, and that said Newhall well knew he had not any lawful claim against this complainant.

And this complainant further showeth that on said January twenty-third (23), A. D. one thousand eight hundred and seventy-nine, the said real estate was unencumbered; that this complainant was seized in fee-simple thereof, in her own right, all of which appeared of record in said county of Middlesex, in the southern district thereof, and was well known to the said Fairfield, Graffam, Newhall, and Dillingham.

That the said real estate was of the value of ten thousand (10,000) dollars; that the same was assessed in said town of Melrose, for the year one thousand eight hundred and seventy-nine (1879), for the sum of seven thousand (7,000) dollars; that at any time during the year one thousand eight hundred and seventy-nine (1879) the said real estate would have brought at auction, if properly advertised, at least the sum of ———.

This complainant further showeth that at all times during the years eighteen hundred and seventy-eight and eighteen hundred and seventy-nine (1879), she was lawfully possessed, in her own right, of at least three thousand (3,000) dollars' worth of unencumbered personal property, which was in said house in the shape of furniture of all descriptions, including a valuable piano, pier glasses, expensive mirrors, rosewood and black walnut furniture, all of which
7 was in said house at Melrose, and it was well known to the said respondents, Fairfield, Graffam, Newhall, and Dillingham, that at all times during the years eighteen hundred and seventy-eight (1878) and eighteen hundred and seventy-nine (1879) this complainant had an agent who had charge of said premises; that from the first (1) day of June, eighteen hundred and seventy-nine (1879), thereafter, said agent had posted in a conspicuous place, in the yard of said premises, a large sign showing that said premises were to let, and that any person desiring to occupy should apply to B. W. Conant, agent, at No. ——.

And that from the first day of December, A. D. one thousand eight hundred and seventy-eight (1878), to the first day of June, A. D. one thousand eight hundred and seventy-nine (1879), the said estate was occupied by James W. Faulkner as the tenant of this complainant, and that said tenant, during the months of January, February, March, April, and May, A. D. one thousand eight hundred and sev-

enty-nine (1879), was constantly in and upon said premises with his family.

And that this complainant, immediately upon the first (1) day of June, A. D. one thousand eight hundred and seventy-nine (1879), took possession of said premises herself, and continued in possession and occupied said house during said month of June, A. D. one thousand eight hundred and seventy-nine (1879), all of which was known to the said Graffam and to the said Fairfield and said Dillingham, as this complainant is informed and believes, or if not known to them could have been readily ascertained by inquiry.

And this complainant further shows that all the proceedings hereinabove referred to pertaining to any pretended sale by the said Dillingham of said real estate upon either of said executions were wholly unknown to her; that she had no notice of the same; that during the entire months of April, May, June, July, and August she had an attorney in this Commonwealth, known to the respondents, upon whom notice of said proceedings might have been served; that she had an agent in the town of Melrose, who was known to the respondent Graffam as the agent of this complainant, and that during
8 the months of May, June, and July, A. D. one thousand eight hundred and seventy-nine (1879), she was frequently in said town of Melrose temporarily sojourning in said house, upon said real estate, and openly and publicly performing many and other notorious acts of occupancy in said premises.

That on or about the first (1) day of May, A. D. one thousand eight hundred and eighty (1880), being wholly ignorant of any proceedings which had taken place, she commenced to improve said estate in Melrose by expending large sums of money in grading the walks and grounds, planting trees and shrubbery, painting said house and repairing the same, building additional piazzas upon the same, and that all these acts by the said complainant were known to the said Peter Graffam, to the said Fairfield, and to the said Dillingham, and were open, notorious, and public, and that in the improvement of the said house, as aforesaid, she expended the sum of about twelve hundred (1200) dollars.

And this complainant further alleges that during the year allowed by the statute of Massachusetts in which a debtor may redeem property sold at sheriff sale the said Graffam, the said Newhall, Fairfield, and Dillingham conspired together to prevent this complainant from obtaining information of the proceedings alleged by them to have taken place upon said executions in favor of said Graffam and said Newhall, whereby the real estate named in this bill was sold as hereinbefore set forth. The said Dillingham, contrary to law, retained each of the said executions, and, in violation of law, did not return the same until the third (3) day of July, A. D. one thousand eight hundred and eighty (1880).

That said Graffam, intending to injure this complainant and to deprive her of her valuable estate in said premises, conspired with said Newhall and procured the said Newhall to assign to him all his pretended right, title, and interest, by virtue of the sale upon the execution in favor of said Newhall, so that he, said Graffam, might be the

owner of the complainant's right to redeem from the sheriff's sale upon the first execution in favor of said Graffam; and the said Graffam, having so purchased said title from said Newhall, and contriving to injure this complainant, did hold the same without giving to this complainant any knowledge or information of any claim under and by virtue of said execution, until about the twenty-second (22) day of June last past, when the respondents
9 Graffam, Fairfield, Freeman, Elliot, Hallahan, and Eastman did enter upon said real estate, during the temporary absence of this complainant, and break into said house and take possession of the same in behalf of said Graffam, unlawfully claiming and pretending that said Graffam was the rightful owner thereof; that they did seize upon all the household furniture in said house, including the furnace, range, and all movable property, and in a wanton, reckless manner move the same from said house, and did strip said house of all personal property contained therein, including the wearing apparel of this complainant, of her servant Mary Marlen, and of her husband Horace C. Burgess, and did also take into their possession and hold a large amount of private correspondence and private papers of great value belonging to this complainant, and the sum of one hundred and seventy (170) dollars in United States currency, removing the same from said house, and have retained possession of the same from said twenty-second (22) day of June, and are in possession of same at the time of the filing of this bill of complaint.

And this complainant further showeth that, immediately upon her becoming informed that the respondents had taken possession of said real estate, she caused an investigation to be made, and then learned for the first time of the pretended sale of said real estate, under and by virtue of said executions; that she thereupon communicated with the said respondent Graffam to ascertain upon what terms the possession of said real estate would be restored to her, and said personal property redelivered to her; that for the time being she was willing, and did offer to waive all right of objection to the claim of said Graffam and said Newhall, and did offer to pay him the full sum of money for which said property had been sold, as alleged, upon said executions, together with such other reasonable costs and charges as the said respondent Graffam had sustained; that the said Graffam refused to consent to the reasonable demands of this complainant, and informed her that he would not transfer his interest in said real estate to this complainant, or redeliver to her said household furniture, unless she should pay to him the sum of eleven hundred (1100) dollars, which said sum he claimed was lawfully due him by reason of large sums of money which
10 had been expended by him in employing men to watch said property and advise him of the absence of this complainant, so that he, the said Graffam, could take possession of said real estate, employing keepers to hold said estate, and to employ counsel to advise him as to his rights in the premises; that upon further conference said Graffam reduced said claim to the sum of seven hundred and fifty (750) dollars, and now insists and demands the sum of

seven hundred and fifty (750) dollars as the least sum of money which he will take and release to this complainant his alleged interest in said real estate.

And this complainant further shows that immediately upon taking possession of said real estate said Graffam caused the same to be held by four keepers whose names are unknown to this complainant. That said keepers have been since in possession of said property.

That this complainant is informed and believes that they have materially injured and destroyed the interior decoration of said house by their wanton and mischievous conduct; that they have openly and publicly manifested great disregard and disrespect for the rights of this complainant and of their duty for the preservation of said property.

And this complainant further alleges that she is informed and believes that said Graffam is preparing to sell said real estate, and is soliciting offers for the same, in said Malden and Melrose, and that it is his purpose to convey the same as soon as possible to some third person, for a valuable consideration, hoping and intending thereby further to injure this complainant, and to embarrass her and to prevent her from redeeming this real estate.

All of which actings and doings and unlawful proceedings, and pretended sale of said real estate under said executions, taking possession of said real estate, are contrary to equity and good conscience, and tend to the manifest injury and oppression of your oratrix, in consideration whereof, and forasmuch as your oratrix is entirely remediless, according to the strict rules of common law, and can only have relief in a court of equity, where matters of this nature are recognizable and relievable; to the end, therefore, that the said respondents, Peter Graffam, Samuel M. Fairfield, Edward B. Newhall, L. Thomas Freeman, Warren Elliot, William Hallahan, Moses F. Eastman, and William C. Dillingham, may
11 full, true, direct, and perfect answer make to all and singular the matters hereinbefore stated and charged (but said respondents are not required to answer under oath, their several and respective oaths being hereby specially waived), as fully and particularly as if the same were hereinafter repeated, and they thereunto distinctly interrogated; and that the said Peter Graffam may be decreed to deliver up said premises now unlawfully held by him, and that your oratrix may have such other and further relief in the premises as to your honors shall seem meet and the nature of this case may require.

And may it please your honors further to grant unto this complainant a writ of injunction directed to the said Peter Graffam, his agents, workmen, attorneys, or any other person who may be in possession of said property under said Graffam, for the purpose of holding the same or for any other purpose whatsoever, commanding them to desist from committing any waste or strip or otherwise injuring said premises, and restraining the said Peter Graffam from making any conveyances of the same to any persons whomsoever.

And may it please your honors further to grant unto your oratrix a most gracious writ of subpœna, issuing out of this court, to be directed to said Peter Graffam, Samuel M. Fairfield, Edward B. Newhall, L. Thomas Freeman, Warren Elliott, William Hallahan, Moses F. Eastman, and William C. Dillingham, thereby commanding them and each of them on a certain day, and under a certain pain, therein to be specified, personally to be and appear in this honorable court, and then and there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem meet, and your oratrix will ever pray.

CHRISTINE J. BURGESS.

COMMONWEALTH OF MASSACHUSETTS, }
District of Massachusetts, } *ss:*

BOSTON, *July* 9, A. D. 1880.

Then personally appeared the above-named Christine J. Burgess, and made oath that the allegations contained in the foregoing bill of complaint are true according to the best of her knowledge, 12 information, and belief, except as to such matters as are stated on information and belief, and as to such them she believes to be true.

Before me—

[SEAL.]

ARTHUR B. CLAPP,
Notary Public.

EXHIBIT A.

COMMONWEALTH OF MASSACHUSETTS:

Know all men by these presents, that I, William C. Dillingham, of Everett, in the county of Middlesex and Commonwealth of Massachusetts, and a deputy sheriff under Eben W. Fiske, Esq., sheriff of said county, having, on the fourth day of April, in the year of our Lord one thousand eight hundred and seventy-nine, by virtue of a writ of execution which was issued upon a judgment, recovered at the first district court of Eastern Middlesex, holden at Malden, within and for the county of Middlesex, on the tenth day of March, in the year of our Lord eighteen hundred and seventy-nine, by Peter Graffam, of Malden, in the county of Middlesex, against Christine J. Burgess, of Providence, in the county of Providence and State of Rhode Island, for the sum of twenty-eight dollars and ninety-five cents damage, and costs of suit taxed at sixteen dollars and fifteen cents, seized and taken all the right, title, and interest which the said Christina J. Burgess had, on the twenty-fourth day of January, in the year of our Lord eighteen hundred and seventy-nine, being the time when the same was attached on mesne process, in and to the following described real estate, to wit: A certain piece or parcel of land, with the buildings thereon, situated in Melrose, in said county of Middlesex, and bounded and described as follows, viz: Beginning at the junction of Emerson and Myrtle streets, and

thence running south 76° east one hundred and twelve feet on said Emerson street; thence south 19° west one hundred and seventy feet on land now or formerly of John Shelton; thence north 76° west one hundred and twenty-one feet and eight inches to said Myrtle street; thence northerly by said Myrtle street one hundred and seventy feet to the point of beginning, containing about
13 19,850 square feet, more or less, and having on the fourth day of April last, being thirty days at least before the time of the sale hereinafter mentioned, given notice in writing to the said Christine J. Burgess of the time and place of sale, by posting up notifications thereof in one public place in said town of Melrose and in one public place in each of the towns of Malden and Wakefield, being two towns adjoining said town of Melrose, and also having caused an advertisement of the time and place of sale to be published three weeks successively before the day of sale, in the public newspaper called the "Malden Mirror," printed at Malden, in said county of Middlesex, on the seventeenth day of May, in the year of our Lord eighteen hundred and seventy-nine, I made sale of said real estate, at public auction, to Peter Graffam, of Malden, in the county of Middlesex, he being the highest bidder for the same, for the sum of seventy-three and $\frac{10}{100}$ dollars: Now, therefore, in consideration of said sum of seventy-three and $\frac{10}{100}$ dollars to me paid by the said Peter Graffam, the receipt whereof I do hereby acknowledge, I have given, granted, bargained, and sold, and do by these presents give, grant, bargain, sell, and convey to the said Peter Graffam, his heirs and assigns, forever, all the right, title, and interest which the said Christine J. Burgess had in and to said real estate, at the time aforesaid, to have and to hold the same to the said Peter Graffam, his heirs and assigns, to his and their use forever, subject, however, to be redeemed agreeably to the law in such case made and provided. And I, the said William C. Dillingham, in my said capacity of deputy sheriff, do covenant with the said Peter Graffam, as aforesaid, that, in making said sale, and in everything concerning the same, I have complied with and observed the rules and requisitions of the law for making sales of rights in equity to redeem real estate. But I do not warrant or defend to the said Peter Graffam that the said Christine J. Burgess had any right, title, or interest in said estate at the time aforesaid.

In witness whereof, I, the said William C. Dillingham, in my said capacity of deputy sheriff, have hereunto set my hand and seal, this seventeenth day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] WM. C. DILLINGHAM,
Deputy Sheriff.

Signed, sealed, and delivered in presence of us.

——— ———,

MIDDLESEX, *May* 17, 1879.

Then the above-named William C. Dillingham personally appeared and acknowledged the above instrument, by him signed, to be his free act and deed.

Before me— WM. G. SPRAGUE,
Justice of the Peace.

MIDDLESEX, *ss:*

June 12, 1879. Rec'd and recorded.
Attest: CHAS. B. STEVENS, *Reg'r.*

A true copy of record. Book 1512, page 319.
Attest: CHAS. B. STEVENS, *Reg'r.*

EXHIBIT B.

Know all men by these presents, that I, William C. Dillingham, of Everett, in the county of Middlesex and Commonwealth of Massachusetts, and a deputy sheriff under Eben W. Fiske, Esq., sheriff of said county, having, on the third day of June, in the year of our Lord one thousand eight hundred and seventy-nine, by virtue of a writ of execution which was issued upon a judgment recovered at the first district court of Eastern Middlesex, holden at Malden, within and for the county of Middlesex, on the tenth day of March, in the year of our Lord eighteen hundred and seventy-nine, by Edward B. Newhall, of Malden, in the county of Middlesex, against Christine J. Burgess, of Providence, in the county of Providence and State of Rhode Island, for the sum of thirty-three dollars and forty-one cents damages, and costs of suit based at fifteen dollars and fifty-five cents, seized and taken all the right which the said Christine J. Burgess had, on the third day of June, in the year of our Lord eighteen hundred and seventy-nine, being the time when the same was taken on execution to redeem from a former sale on execution made by me on the seventeenth day of May, A. D. 1879, the following described real estate, to wit: A certain piece or parcel of land with the buildings thereon, situated in Melrose, in said county of Middlesex, and bounded and described as follows, viz: Beginning at the junction of Emerson and Myrtle street and thence running south 76° east one hundred and twelve feet on said Emerson street; thence south 19° west one hundred and seventy feet on land now or formerly of John Shelton; thence north 76° west one hundred and twenty-one feet and eight inches to said Myrtle street; thence northerly by said Myrtle street one hundred and seventy feet to the point of beginning, containing about 19,850 square feet, more or less, and having, on the sixteenth day of June last, being thirty days at least before the time of sale hereinafter mentioned, given notice in writing to the said Christine J. Burgess of the time and place of sale by posting up notifications thereof in one public place in said town of Melrose and in one public place in each of the towns of Malden and Wakefield, being two towns adjoining said town of Melrose,

and also having caused an advertisement of the time and place of sale to be published three weeks successively before the day of sale, in the public newspaper called the "Malden Mirror," printed at Malden, in said county of Middlesex, on the thirteenth day of August, in the year of our Lord eighteen hundred and seventy-nine, I made sale of said right of redemption at public auction to Edward B. Newhall, of Malden, in said county of Middlesex, he being the highest bidder for the same, for the sum of eighty-one and $\frac{71}{100}$ dollars: Now, therefore, in consideration of said sum of eighty-one and $\frac{71}{100}$ dollars to me paid by the said Edward B. Newhall, the receipt whereof I do hereby acknowledge, I have given, granted, bargained, and sold, and do by these presents give, grant, bargain, sell, and convey to the said Edward B. Newhall, his heirs and assigns, forever, all the right which the said Christine J. Burgess had of redeeming the aforesaid real estate at the time aforesaid, to have and to hold the same to the said Edward B. Newhall, his heirs and assigns, to his and their use forever; subject, however, to be redeemed agreeably to the law in such case made and provided. And I, the said William C. Dillingham, in my said capacity of deputy sheriff, do covenant with the said Edward B. Newhall as aforesaid, that in making said sale, and in everthing concerning the same, I have complied with and observed the rules and requisitions of the law for making sales of rights in equity to redeem real estate. But I do not warrant or defend to the said Edward B. Newhall that the said Christine J. Burgess had any right, title, or interest in said estate at the time aforesaid.

In witness whereof, I, the said William C. Dillingham, in my said capacity of deputy sheriff, have hereunto set my hand and seal, this thirteenth day of August, in the year of our Lord one
16 thousand eight hundred and seventy-nine.

[SEAL.] WM. C. DILLINGHAM,
Deputy Sheriff.

Signed, sealed, and delivered in presence of us.

——— ———.

SUFFOLK, *ss:*

SEPT. 26, 1879.

Then the above-named William C. Dillingham personally appeared and acknowledged the said instrument by him signed to be his free act and deed.

Before me— HORACE D. GOVE,
Justice of the Peace.

MIDDLESEX, *ss:*

Oct. 24, 1879. Rec'd and recorded.
Attest: CHAS. B. STEVENS, *Reg'r.*

A true copy of record. Book 1525, page 17.
Attest: CHAS. B. STEVENS, *Reg'r.*

On the sixteenth day of July, A. D. 1880, the following amendment to bill was filed and allowed by the court, namely:

Amendment to Bill. Filed July 16, 1880.

The complainant in the above-entitled cause comes and moves to amend her said bill of complaint by adding thereto at the end of the charging part of said bill, to wit, at the end of the third paragraph, on the ninth page thereof, the following:

And this complainant further shows that since the filing of this her bill of complaint she has been informed and believes that the said Peter Graffam and Samuel M. Fairfield, further contriving to injure this complainant and to deprive her of her valuable rights in said real estate at Melrose, and for the further purpose of embarrassing her and preventing her from redeeming said property, conspired together with one Herbert F. Doble, of Quincy, in the county of Norfolk, Commonwealth of Massachusetts, a citizen of the district of Massachusetts; that said Graffam, as this complainant is informed and believes, on the seventh day of July current, conveyed said real estate by quit-claim deed, a copy of which will be in the court produced, to the said Herbert F. Doble, of Quincy, in consideration of the sum of five thousand (5,000) dollars, one Alice F. Graffam, wife of said Peter Graffam, joining in said deed in releasing all dower of homestead; that said deed was not recorded until subsequent to the filing of this bill and the service of subpœna upon the respondents therein named, to wit, on the fourteenth day of July current, at twelve (12) o'clock and fifty (50) minutes p. m.

17 But this complainant shows that said deed, as appears from the record, is dated on the sixth (6) day of July, A. D. 1880, and purports to have been acknowledged on the seventh (7) day of July, A. D. 1880, before the respondent, Samuel M. Fairfield, as justice of the peace.

And this complainant is informed and believes that the said Herbert F. Doble is a man wholly without means; that he has no personal or real property standing in his own name, and never had; that he is not so situated in life as to be able to command the sum of five thousand (5,000) dollars.

This complainant further alleges that she is informed and believes that said Peter Graffam did not receive from the said Doble any sum of money; that the consideration stated in said deed is wholly inadequate when compared with the real value of said property; that the said Peter Graffam since the date of said conveyance has not had in his possession any considerable sum of money; that the said deed was not in truth and in fact acknowledged on the seventh (7) day of July, A. D. 1880, but was acknowledged at a date subsequent to the filing of this bill, and dated back for the purpose of embarrassing this complainant and hoping thereby to deceive her and to deprive her of her valuable rights in said real estate.

And this complainant further states that she is informed and believes that the said Herbert F. Doble had full knowledge of the

circumstances under which the said Peter Graffam came in possession of said real estate; that he had no title therein; that any pretended title of said Graffam by means of which he got possession of said real estate was unlawful and in fraud of this complainant.

And this complainant further states that the said Herbert F. Doble since the recording of said deed has not taken possession of said real estate personally, nor does he appear to intend to use and occupy the same, but for the most part of the time said estate has been held by some persons as keepers, who were in possession of said estate as keepers, while the said Peter Graffam held the same.

Second Amendment.

This complainant further asks leave to amend her said bill of complaint by inserting in the prayer for subpœna and for
18 injunction the name of Herbert F. Doble, of Quincy; and she respectfully prays that a subpœna may forthwith issue to the said Herbert F. Doble commanding him to appear, as fully set out in the tenor of said prayer in said bill, and an order restraining said Doble from conveying said real estate in meantime or until further order of court.

CHRISTINE J. BURGESS,
By RICHARD T. ATKIN.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

BOSTON, *July* 16, A. D. 1880.

Then personally appeared Richard T. Atkin, in behalf of the above-named Christine J. Burgess, and made oath that the facts contained in the foregoing amendment are correct and true, except as to such matters as are stated on information and belief, and as to such matters he believes them to be true.

Before me— ARTHUR B. CLAPP,
Notary Public.

19 Upon the filing of the bill of complaint as aforesaid a writ of subpœna issued directed to the defendants, Peter Graffam, Samuel M. Fairfield, Edward B. Newhall, L. Thomas Freeman, Warren Elliott, William Hallahan, Moses F. Eastman, and William C. Dillingham, commanding them and each of them to appear at the rules to be holden at the office of the clerk of this court in Boston on the second day of August then next, to answer thereto, and upon the filing of the amendment to bill as aforesaid, a writ of subpœna issued directed to the defendant, Herbert F. Doble, commanding him to appear at the rules to be holden at the office of the clerk of this court in Boston on the sixth day of September then next, to answer to said bill of complaint as amended; both of which said subpœnas were afterwards returned by the marshal of this district duly served upon each of the said defendants, and each of said defendants duly appeared as commanded in said subpœnas, and thereupon the following answers and replications were filed, namely:

20 *Answer of Peter Graffam. Filed Sept.* 6, 1880.

This defendant, reserving unto himself all right of exception to the plaintiff's bill of complaint, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, says that he believes the complainant owned the house and land situated in the town of Melrose, in said Commonwealth, as is alleged in the complainant's bill, and this defendant admits that he was employed by the complainant to do and did do certain work upon said house, but in regard to the allegations in the complainant's bill, that said work was done in an unworkmanlike manner, this defendant says that said allegations are immaterial, and further that they are false. And this defendant says that said complainant, although often requested by this defendant to pay him for said services, refused so to do, and in consequence of such refusal this defendant admits

21 that he did employ the defendant, Samuel M. Fairfield, an attorney-at-law, and that he did cause the complainant to be sued, and the said real estate to be attached by virtue of a writ issued out of the first district court of Eastern Middlesex county on or about the twenty-fourth day of January, 1879, and that said writ was duly entered in said court. And this defendant further saith that the complainant knew that said suit had been brought and had proper and legal notice of the pendency thereof, and that she employed an attorney to appear in said suit, to wit, H. B. Bryant, an attorney-at-law of Boston, in said Commonwealth, and that said Bryant did appear for the defendant therein, to wit, this complainant. And this defendant further saith that he is informed and believes that, after the said suit had been entered, and before it was reached for trial, the complainant came to the office of said Fairfield, who was then in said case the attorney of this defendant, to secure his consent to the postponement of said suit; that the complainant went to the office of said attorney Fairfield and saw said Fairfield three times in one day in regard to said suit while it was pending; that when said suit was reached for trial said complainant appeared by attorney and endeavored to secure a continuance of said suit, but the court refused to grant a continuance for lack of a sufficient reason therefor, and the complainant was defaulted. And this defendant further saith that this defendant, by his attorney, agreed that during four days after said default the complainant might have the privilege of appealing and filing a bond for costs, or that she might at any time during four days have the default removed, but that the complainant neglected to have said default removed or to appeal from the judgment rendered in said suit, and that execution was issued upon said judgment upon the twenty-first day of March, A. D. 1879; and this defendant, by his attorney, said Fairfield, thereupon notified the complainant that execution would be levied upon her property unless the amount thereof was paid, but the complainant willfully refused to pay the amount of said execution, and said execution was thereupon duly levied upon said real estate by William C. Dillingham, a dep-

uty sheriff of said county of Middlesex and a defendant herein. And this defendant further saith that said real estate was duly seized and said execution duly levied, and said real estate sold
22 thereon in all respects in conformity with law; and this defendant purchased said real estate at properly and legally advertised public auction, and received a deed thereof from said deputy sheriff. And this defendant annexes hereto a copy of the record of said court in said suit and a copy of said execution, and the said deputy sheriff's returns thereon as duly returned to court, which he makes a part of his answer and craves leave to refer to for a more particular statement of the facts. And this defendant further says that he was then the proper and legal owner of said real estate, subject to the complainant's right of redemption; and that the complainant failed and neglected to redeem said real estate within the time permitted by law, and the title of this defendant to said real estate then became absolute, and the complainant lost all right, title, or interest in said property, and had lost all her right, title, and interest therein before the bringing of her bill of complaint in this suit. And this defendant further says that on or about the third day of June, 1879, whatever remaining interest, right, or title the complainant had in said real estate after the sale as above set forth to this defendant was seized and sold by virtue of an execution issued out of the said district court against the complainant and in favor of one Edward B. Newhall, one of the defendants herein; that said seizure and sale, as this defendant is informed and believes, were entirely in conformity of law; and the defendant Newhall at said sale was the purchaser and highest bidder, and received a deed, whereby said defendant Newhall became the owner of said premises under said sale, subject only to the right which this defendant had acquired under the prior sale above set forth, and to the complainant's right of redemption; that said Newhall transferred and sold his interest in said real estate to this defendant; that this defendant informed the complainant that she would lose said real estate unless she paid his claim against it, but that the complainant wilfully refused to pay said claim, and neglected and refused to redeem said real estate according to law, and said real estate thereupon became absolutely the property of this defendant, and the complainant lost all right, title, or interest therein. And this defendant denies that he ever conspired, as alleged by the complainant, or in any other way to
23 defraud the complainant out of said real estate, and he says that the complainant has never, at any time, made any tender to him for his expenses or costs, or for his services, or for any other thing whatever. And this defendant further saith that said complainant was aware of all the proceedings upon both of said executions, or might have been aware of them with reasonable inquiry; that she has employed, as this defendant is informed and believes, at least five attorneys to attend to the suit of the said Graffam, and to the proceedings that might be instituted upon the execution obtained therein; that this defendant, after he obtained said execution, personally notified the complainant to discharge it, or it would be satisfied upon her said real estate; that all proceedings upon said executions, or

either of them, were open, public, and entirely in accordance with law; that this complainant well knew, as this defendant believes, at the time of the bringing of her bill, that she had been informed of the pendency of the said suit of this defendant before judgment had issued thereon; that she employed an attorney to represent her therein; that she well knew of the issuance of execution therein before she had lost any right of redemption of said real estate, and that she wilfully and negligently suffered said time for redemption to pass by, intending to delay or defeat the just claim of this defendant. And this defendant denies that he has unlawfully seized any personal property of the complainant, or of her servant, or of her husband, but he says that certain effects or personal property of the complainant were taken care of by the direction of this defendant; that said personal property or effects are, and have been, properly stored by this defendant, and that the complainant, before the bringing of her bill, had notice of said storage and well knew that she could obtain said personal property or effects at any time. And in regard to all the other allegations and averments in the complainant's bill this defendant says that he believes that they are wholly immaterial, and he says that he is ignorant whether or not they are true, and if material he puts the complainant upon her proof of the same. Upon information and belief he denies each and every one of the same. He says and claims that after the expiration of the time within which the complainant had her right of redemption under said first sale he became the owner, with an absolute and full title to all of the real estate described and referred
24 to in said bill, and that complainant, at the time of filing said bill, had no right, title, or interest in the same; that she had no right to hold or keep or have possession of the house, and that all he did in the premises he had a full right to do; that before the bringing of the complainant's bill this defendant had sold, conveyed, and transferred, for a valuable consideration, to one Herbert F. Doble, all his right, title, and interest in the said real estate, and this defendant has now no right, title, and interest therein; and this defendant submits to this honorable court that all and every the matters in the said complainant's bill mentioned and complained of are, as he is informed and believes, matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity; and this defendant says that he demurs to the said bill and the allegations therein, for the reason above submitted.

PETER GRAFFAM,
By his Attorney, A. A. RANNEY.

Copy of Records as Referred to in Defendant's Answer.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } ss:

First district court of Eastern Middlesex to the sheriffs of our several counties, their deputies, the constables of any city or town within our said counties, or to any or either of them, Greeting:

We command you to attach the goods or estate of Christina J.

Burgess, of Providence, in the county of Providence and State of Rhode Island, to the value of two hundred dollars, and summon (for want thereof to take the body of the said defendant, if she may be found in your precinct) to appear before the justice of the first district court of Eastern Middlesex, to be holden at Malden, within and for our said county of Middlesex, on Saturday, the first day of February next, at nine of the clock in the forenoon, then and there in our said court to answer unto P. Graffam, of Malden, in the county of Middlesex, in an action of contract to the damage of the said plaintiff (as he says) in the sum of two hundred dollars, which shall then and there be made to appear with other due damages. And have you there this writ, with your doings therein.

Witness John W. Pettengill, Esq., of Malden, the twenty-third day of January, in the year of our Lord one thousand eight hundred and seventy-nine.

WILLIAM N. TYLER, *Clerk.*

Officer's Return.

MIDDLESEX, *ss:*

JANUARY 24, 1879.

By virtue of this writ, I, this day, at eleven o'clock and twenty minutes a. m., attached all the right, title, and interest the within-named Christina J. Burgess has in and to any and all real estate in the southern district of Middlesex county, Jan. 25, 1879. I have made diligent search for the said Christina J. Burgess, for her last and usual place of abode, and for her tenant, agent, or attorney, and cannot find either within my precinct, and am satisfied she has none in this State known to me or the plaintiff.

WM. C. DILLINGHAM,
Deputy Sheriff.

Attachment	$1 00
Travel	32
Copy and recording	1 25
	2 57

Endorsement.

First District Court of Eastern Middlesex.

1879. No. 1622.

P. Graffam, plaintiff. S. J. Burgess, defendant.

Costs.

Writ	$1 00
Service	2 57
Entry	
Travel, miles	99
Attendance, day	99

3—79

Subpœna and service	
Witnesses	60
Attorney fee	2 50
Term fee	3 00
Order of notice	50
Publishing notices	4 00
	$16 15
Damages, March 10, 1879	28 95
Examined and allowed	$45 10

Attest: WM. N. TYLER, *Clerk.*

Execution issued, March 21, 1879, from the office of S. M. Fairfield, No. 23 Court street.

Order of Notice.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } ss:

First District Court of Eastern Middlesex.

FEB. 4, 1879.

At a court begun and holden at Malden, in said county, on the first day of February, in the year one thousand eight hundred and seventy-nine, Peter Graffam, plaintiff, Christina J. Burgess, defendant, supposed trustee. This is an action of contract to recover the sum of twenty-eight $\frac{72}{100}$ dollars, alleged to be due the plaintiff from the defendant, on the twenty-third day of January, as set forth by the plaintiff's writ of that date.

And it appearing to the court by the suggestion of the plaintiff, and on inspection of the officer's return of the plaintiff's writ that the defendant at the time of the service of said writ had no last and usual place of abode, agent or attorney in this Commonwealth known to the plaintiff or the said officer, and that no personal service of said writ has been made upon the defendant, it is ordered by the court here that the plaintiff give notice of the pendency of this action by causing and attested copy of this order to be published in the "Malden Mirror," a newspaper printed in said Malden, once a week, three weeks successively, and that this action be continued to the
27 twenty-fourth day of February next, or until notice shall be given to the defendant, agreeably to this order.

WM. N. TYLER, *Clerk.*

S. M. FAIRFIELD,
Plaintiff's Attorney.

A true copy.

Attest: WM. N. TYLER, *Clerk.*

MALDEN, *Feb.* 24, 1879.

In accordance with the within order, I have caused the insertion for three successive weeks in the "Malden Mirror," and have sent to the defendant's address copies of the same, postage prepaid.

S. M. FAIRFIELD,
Attorney for the Plaintiff.

Motion to Amend.

MIDDLESEX, *ss:*

First District Court of Eastern Middlesex.

PETER GRAFFAM *v.* CHRISTINA J. BURGESS.

And now comes the plaintiff in the above-entitled action, and moves to amend his writ by inserting the word "Peter" in the name of the plaintiff, instead of the initial letter "P," therein used.

By his Attorney, S. M. FAIRFIELD.

Declaration.

And the plaintiff says the defendant owes him twenty-eight dollars and seventy-two cents ($28.72) according to the account hereto annexed.

S. M. FAIRFIELD,
Attorney for Plaintiff.

Account Annexed.

MALDEN, *Jan.* 1, 1878.

Mrs. C. J. BURGESS to P. GRAFFAM, Dr.

Sept.	7.	To one mason, 1 day, topping chimney	$3 00
"	12.	" 125 face brick	2 50
"	"	" one mason, 1 day, topping chimney	3 00
	Sept. 12.	To lime C	1 15
28	"	" " 1 bushel hair	25
	"	" " trucking	75
Sept.	13.	To 1 mason, 1 day	3 00
"	"	" 4½ barrels mortar	4 00
"	"	" 1¼ barrels skimming	2 00
"	"	" trucking	75
"	14.	" two men 1 day, whitening	6 00
"	"	" stock	3 13
"	"	" track, stock from Melrose to Malden	75
			30 28

DR.

Cr. by stock brought back.

¾ C lime, 87 cents; ½ barrel skimming, $1.00 ----	$1 87	
1 bushel hair, 25 cents; 14 face brick, 28 cents---	53	
		2 40
		27 88
Int.----------		84
		28 72

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } ss:

First District Court of Eastern Middlesex.

At the first district court of Eastern Middlesex, holden at Malden, within and for the county of Middlesex, on the first day of February, in the year of our Lord one thousand eight hundred and eighty, Peter Graffam, plaintiff, and Christina Burgess, as defendant, in an action of contract.

Feb. 4, A. D. 1879, order of notice issued, returnable Feb. 24, 1879, to be published in the "Malden Mirror" Feb. 28, 1879. Notice and service returned on trial list for trial in said court for March 10, 1879, at which time the defendant is defaulted, and H. B.
29 Bryant, Esq., appear- for said defendant, C. J. Burgess, and enters an appeal in said case, surety to be furnished on or before March 14, 1879. March 21, 1879. Execution issued and returned satisfied July 3, 1880.

Judgment for damages----	$28 95	
	16 15	

Attest: WM. N. TYLER, *Clerk.*

Certificate of Witnesses.

At the trial of the above-entitled action on March 10, 1879, we, the undersigned witnesses, certify that we attended said court on the summons of the plaintiff, and travelled the number of miles set opposite our respective names.

Gustavus R. Tebbets attended one day and travelled two miles.

William H. Graffam attended one day and travelled two miles.

(Signed) GUSTAVUS R. TEBBETTS.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } ss:

I, William N. Tyler, clerk of the first district court of Eastern Middlesex, within and for the county of Middlesex, hereby certify that the foregoing is a true copy of the record of a judgment in the case of Peter Graffam, plaintiff, and C. J. Burgess, as defendant, from the records of said court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, this sixth day of September, A. D. 1880.

WILLIAM N. TYLER,
Clerk of the First District Court of Eastern Middlesex.

Execution.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

First district court of Eastern Middlesex to the sheriffs of our several counties or their deputies, the constables of any city or town within our said counties, or any or either of them, Greeting:

Whereas Peter Graffam, of Malden, in the county of Middlesex, the judgment creditor by the consideration of the justice of our first district court of Eastern Middlesex, holden at Malden, within and for our county of Middlesex aforesaid, on the tenth day of March, A. D. 1879, recovered judgment against Christina J. Burgess, of Providence, in the county of Providence and State of Rhode Island, the judgment debtor, for the sum of twenty-eight dollars and ninety-five cents debt or damage, and sixteen dollars and fifteen cents, cost of suit as to us appears of record, whereof execution remains to be done:

We command you, therefore, that of the goods and chattels and lands of the said judgment debtor within your precinct, you cause to be paid and satisfied unto the said judgment creditor the aforesaid sums, being forty-five dollars and ten cents in the whole, together with interest thereon from said day of the rendition of said judgment, with twenty-five cents more for this execution writ, together with your own fees.

Damages	28 95
Costs	16 15
	$45 10
	25
Interest	51
Levy	1 00
Travel	1 20
Pound	1 84
Publishing	7 00
Prep.	6 00
Attending	5 00
Deed	3 00
Recording	1 00
Horse, etc.	1 20
	$73 10

Hereof fail not, and make return of this writ, with your doings therein, unto our said court, in sixty days from the date of this writ.

Witness John W. Pettengill, Esq., at Malden, the twenty-first day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

WILLIAM N. TYLER, *Clerk.*

Officer's Return.

MIDDLESEX, *ss:*

APRIL, 4, 1879.

By virtue of this execution I this day seized and took all the right, title, and interest that the within-named Christina J. Burgess had, liable to be taken on execution on the twenty-fourth day of
31 January, 1879, at eleven o'clock and twenty minutes a. m., being the time the same was attached on mesne process, or that she has at any time since had in and to the following described real estate, to wit: A certain piece or parcel of land with the buildings thereon, situated in Melrose, in said county of Middlesex, and bounded and described as follows, viz., begininng at the junction of Emerson and Myrtle streets and thence running south 76° east one hundred and twelve feet on said Emerson street; thence south 19° west one hundred and seventy feet on land now or formerly of John Shelton; thence north 76° west one hundred and twenty-one feet and eight inches to said Myrtle street; thence northerly by said Myrtle street one hundred and seventy feet to the point of beginning, containing about 19,850 square feet, more or less, and on this fourth day of said April I caused notifications of the time and place of the proposed sale of the said Christina J. Burgess' right, title, and interest in and to the above described property, to be posted up in one public place in said Melrose and also in each of the towns of Malden and Wakefield, being two towns adjoining said Melrose, all of which notices were posted thirty days at least before the time appointed for said sale. I also caused an advertisement of the time and place of sale to be published three weeks successively before the sale in the "Malden Mirror," a public newspaper printed in said county of Middlesex. I have also made diligent search for the said Christina J. Burgess, and cannot find her within my precinct. I was therefore unable to give her notice of the time and place of sale. In pursuance of said notice and advertisements, on the seventeenth day of May, 1879, at ten o'clock a. m., at my office, in Hill's Building, so called, on Main street, in Malden, in said county, being the time and place previously appointed for said sale, I made sale of said Christina J. Burgess' right, title, and interest in and to the premises aforesaid, at the time aforesaid, by public auction to Peter Graffam, of Malden, in said county, he being the highest bidder therefor, which brought the sum of seventy-three and $\frac{10}{100}$ dollars; and I have made, executed, acknowledged, and delivered to said Peter Graffam, under my hand and seal as deputy sheriff, a good and sufficient deed of said Christina J. Burgess' right, title, and interest in and to said premises as aforesaid, and I have deducted from the
32 said sum of $73.10 the amount of my fees and charges for the levy of this execution, being $27.24, and the balance being forty-five and $\frac{86}{100}$ dollars; I have applied in full satisfaction of this

execution, as appears by the receipt of the attorney for the within-named judgment creditor, which is indorsed hereon, and so I return this execution satisfied.

(Fees taxed in margin.)

WM. C. DILLINGHAM,
Deputy Sheriff.

MIDDLESEX, *ss:*

MAY 17, 1879.

Received of William C. Dillingham, deputy sheriff, forty-five and $\frac{85}{100}$ dollars in full satisfaction of this execution.

PETEL GRAFFAM,
Per S. M. FAIRFIELD, *Att'y.*

1879. No. 1622.

PETER GRAFFAM, Plaintiff. C. J. BURGESS, Defendant.

Ex'on	$0 25
Dam.	28 95
Costs	16 15

Filed July 3, 1880.

S. M. FAIRFIELD,
Plaintiff's Attorney.

Answer of Samuel M. Fairfield. Filed Sept. 6, 1880.

This defendant, reserving unto himself all right of exception to the complainant's bill of complaint, for answer thereunto, or unto so much thereof as this defendant is advised is material or necessary for him to make answer unto, says: That he is an attorney-at-law, residing in Malden, in said Commonwealth; that during the month of January, 1879, he was employed by the defendant, Peter Graffam, to bring suit for the recovery of a claim against this complainant; that before he brought suit upon said claim he wrote to this complainant and had interviews with her, and urged her to pay the same, which she neglected and refused to do; and thereupon this defendant brought suit, as directed, against this complainant in the
33 first district court of Eastern Middlesex; that said suit duly proceeded to judgment in a proper and legal manner, as appears of record in said court; that this complainant had due and legal notice of the pendency of said suit; that she appeared in said suit by counsel before judgment was obtained therein; that she had several interviews with this defendant while said suit was pending and before judgment was obtained therein, and concerning the pendency thereof; that she did not appeal from the judgment rendered in said suit; and execution was duly issued therein and placed in the hands of defendant Dillingham, who, in a proper and legal manner, levied said execution upon the real estate described in the complainant's bill, and duly seized and sold the same at public auction to the highest bidder, after giving due and proper and legal notice and doing all other things connected therewith according to law;

that said Graffam became the purchaser at said sale; that the complainant neglected to redeem as provided by law, although she well knew of such levy, and the title of the defendant Graffam to said real estate thereupon became absolute as against this complainant. And this defendant says that he was employed by, and did bring a suit for, the defendant Newhall, as is alleged in the complainant's bill; that said suit duly proceeded to judgment, as appears by the record of said court, a copy whereof is hereto annexed; that execution was duly issued therein and placed in the hands of defendant Dillingham; that said Dillingham duly levied said execution upon said real estate and seized and sold the same in all respects according to law; that said Newhall purchased, at said sale, the defendant's right in said real estate, and became the owner thereof, subject to the prior rights of said Graffam and the right of redemption. And this defendant says that all steps in both of said suits that the law requires to be taken were taken; that the law in all respects was complied with, and that no attempt was made by this defendant to defraud the complainant out of any of her legal rights. And this defendant denies that he has ever conspired with said Dillingham and said Graffam, or either of them, or with any one whatsoever, to obtain judgment in said suits, or either of them, without the complainant's knowledge, to levy said executions, or either of them, upon said real estate without the complainant's
34 knowledge, to deprive the complainant of her right of redemption in said real estate, or to do anything whatsoever to defraud the complainant in any way. And in regard to all the other allegations in the complainant's bill, so far as they affect this defendant, this defendant says that he does not know whether they are true or false; that he denies each and every allegation, and puts the complainant upon her proof thereof. And this defendant submits that all and every the matters in the said complainant's bill mentioned and complained of are matters which may be tried and determined in a court of law, and with respect to them the said complainant is not entitled to any relief from a court of equity. And this defendant demurs to the said bill, and the allegations therein, for the reasons above submitted.

SAM. M. FAIRFIELD,
By his Attorney, A. A. RANNEY.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Then personally appeared the above-named Sam. M. Fairfield, and made solemn oath that the above answer is true so far as it pertains to his own knowledge, and that so far as it pertains to matters upon information and belief he believes it to be true.

Before me— GEORGE F. MEARS,
Justice of the Peace.

Answer of Edward B. Newhall. Filed Sept. 6, 1880.

This defendant, reserving unto himself all right of exception to the plaintiff's bill of complaint, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, says that he believes the complainant owned said real estate situated in said town of Melrose, in said Commonwealth, as is alleged in her bill of complaint. That he was employed by said complainant to do,
35 and did do, certain valuable services for her in relation to said house, and that, although repeatedly and often requested by this defendant of this complainant to pay him for said service, she refused so to do; and in consequence of such refusal this defendant admits that he did employ said Sam. M. Fairfield, an attorney-at-law in said Commonwealth, and one of the defendants mentioned in the complainant's bill of complaint, and that he did cause the complainant to be sued, and said real estate to be attached by virtue of a writ issued out of the first district court of eastern Middlesex, mentioned in the complainant's bill, on or about the twenty-fourth day of January, A. D. 1879. That said writ was duly entered in said court. And this defendant further says that this complainant, then defendant, knew that said suit had been brought; that proper and legal notice of the pendency of said suit was given this complainant by order of said court, and that she then employed an attorney to appear for her in said suit, to wit, H. B. Bryant, an attorney-at-law, of Boston, in said Commonwealth, and that said Bryant did appear for her therein, as duly appears of record in said court, a certified copy of which record is hereto annexed and made a part of this defendant's answer. That this complainant, then defendant in said suit, and while said suit was pending, went to the office of said Fairfield, who was then the attorney of this defendant, Newhall, to secure his consent to the postponement of said suit. That when said suit was reached this complainant, then defendant, appeared by attorney and endeavored to secure a continuance of said suit, but the court refused to grant a continuance for lack of a sufficient reason therefor, and this complainant, then defendant, was defaulted. That this defendant, by his attorney, Fairfield, in said suit agreed that during four days after said default this complainant might have the privilege of appealing and filing bond for costs, or that she might at any time during said four days have the default removed. That this complainant neglected to do either; that judgment was entered and execution issued thereon. That this defendant notified, by his attorney, Fairfield, this complainant that execution would be levied upon her property unless the amount was paid, but the complainant wilfully refused to pay the amount of said execution, and said execution was duly levied upon said real estate or upon so much as
36 remained or might remain after the satisfaction of the execution levied in favor of Peter Graffam, one of the defendants herein, by William C. Dillingham, a deputy sheriff of said county of Middlesex, and one of the defendants herein; and this defendant

says that said real estate was duly seized and sold upon said execution in all respects in conformity with law, and this defendant purchased said real estate, subject only to said claims upon said property and this complainant's right of redemption, as by law made and provided at a legally and properly advertised public auction, and received a deed thereof from said Dillingham, a deputy sheriff, as aforesaid; and this defendant annexes hereto a copy of the records of said court in said suit and a copy of said execution, with said deputy sheriff's return thereon, as duly returned to court, which he makes a part of his answer and craves leave to refer to for a more particular statement of the facts. That this defendant transferred and sold his interest in said real estate obtained as aforesaid to said Peter Graffam, a defendant herein, before the complainant's right of redemption of said real estate had expired as by law provided, and before the bringing of this bill of complaint.

And this defendant denies that he ever conspired, as alleged by the complainant, or in any other way, to defraud or injure her, or to deprive her of said real estate unlawfully; that the complainant has never at any time made any tender to him for his services, or for his expenses or costs, or for any other thing whatever; that all the proceedings upon his said execution were open, public, and entirely in accordance with law, and that the complainant knew of the pendency of said proceedings, and that all he did in said proceedings he had a full right to do; and this defendant submits to this honorable court that all and every the matters in the said complainant's bill mentioned and complained of, as he is informed and believes, are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity.

And this defendant says that he demurs to the said bill and the allegations therein for the reason above submitted.

EDWARD B. NEWHALL,
By his Attorney, A. A. RANNEY.

37 COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss.*:

First district court of Eastern Middlesex to the sheriffs of our several counties, their deputies, the constables of any city or town within our said counties, or to any or either of them, Greeting:

We command you to attach the goods or estate of Christina J. Burgess, of Providence, in the county of Providence and State of Rhode Island, to the value of two hundred dollars, and summon the said defendant (if she may be found in your precinct) to appear before the justice of the first district court of Eastern Middlesex, to be holden at Malden, within and for our said county of Middlesex, on Saturday, the first day of February next, at nine of the clock in the forenoon, then and there in our said court to answer unto E. B. Newhall, of Malden, in the county of Middlesex, in an action of contract to the damage of the said plaintiff (as he says) the sum of two hundred dollars, which shall then and there be made to appear

with other due damages; and have you there this writ, with your doings therein.

Witness John W. Pettengill, Esq., at Malden, the twenty-third day of January, in the year of our Lord one thousand eight hundred and seventy-nine.

—— ——, *Clerk.*

Officer's Return.

MIDDLESEX, *ss:*

JAN. 24, 1879.

By virtue of this writ, I, this day, at eleven o'clock and twenty-five minutes a. m., attached all the right, title, and interest the within-named Christina J. Burgess has in and to any and all real estate in the southern district of Middlesex county, Jan. 25, 1879. I have made diligent search for the within-named Christina J. Burgess, for her last and usual place of abode, and for her tenant, agent, or attorney, and cannot find either within my precinct, and am satisfied she has none in this State known to me or the plaintiff.

WM. C. DILLINGHAM,
Deputy Sheriff.

38	Attachment	$1 00
	Travel	32
	Copy and recording	1 25
		$2 57

Endorsement.

First District Court of Eastern Middlesex.

1879. No. 1621.

E. B. Newhall, plaintiff. C. J. Burgess, defendant.

Costs.

Writ	$1 00
Service	2 57
Entry	
Travel, miles	99
Attendance, day	99
Subpœna and service	
Order of notice	50
Attorney fee	2 50
Term fee	3 00
Publishing notice	4 00
	$15 55
Dam. March 10, 1879	33 41
Examined and allowed	$48 96

Attest: WM. N. TYLER, *Clerk.*

Execution issued March 21, 1879, from the office of S. M. Fairfield, No. 23 Court street.

Declaration.

And the plaintiff says the defendant owes him thirty-three dollars and fifteen cents ($33.15), according to the account hereto annexed.

S. M. FAIRFIELD,
Attorney for Plaintiff.

Account Annexed.

BOSTON, *June* 4, 1874.

Mrs. C. J. Burgess to E. B. Newhall, Dr.

	To care and letting house, corner Myrtle and Emerson streets, Melrose	$25 00
	To drawing two leases	1 00
39	Received payment	$26 00
	Int. 4 years 7 months	7 15
		$33 15

Motion to Amend.

And now comes the plaintiff in the above-entitled action, and moves to amend his writ by inserting the word "Edward" in place of the initial letter "E." therein used.

By his Attorney, S. M. FAIRFIELD.

Motion to Amend Writ.

Motion allowed.

J. W. P., *Justice of F. D. Ct.*

S. M. FAIRFIELD,
Plaintiff's Attorney.

Order of Notice.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

First District Court of Eastern Middlesex.

FEB. 4, A. D. 1879.

At a court begun and holden at Malden, in said county, on the first day of February, in the year one thousand eight hundred and seventy-nine, Edward B. Newhall, plaintiff, Christina J. Burgess, defendant and supposed trustee.

This is an action of contract to recover the sum of thirty-three and $\frac{15}{100}$ dollars, alleged to be due the plaintiff from the defendant on the twenty-third day of January, as set forth by the plaintiff's writ of that date.

And it appearing to the court by the suggestion of the plaintiff, and on inspection of the officer's return of the plaintiff's writ, that

the defendant at the time of the service of said writ had no last and usual place of abode, agent or attorney in this Commonwealth known to the plaintiff or the said officer, and that no personal service of said writ has been made upon the defendant, it is ordered by the court here that the plaintiff give notice of the pendency of this action by causing an attested copy of this order to be published in
40 the "Malden Mirror," a newspaper printed in said Malden, once a week, three weeks successively, and that this action be continued to the twenty-fourth day of February next, or until notice shall be given to the defendants, agreeably to this order.

WM. N. TYLER, *Clerk.*

S. M. FAIRFIELD,
Plaintiff's Attorney.

A true copy.
Attest:

WM. N. TYLER, *Clerk.*

MALDEN, *Feb.* 24, 1879.

In accordance with the within order I have caused its insertion for three successive weeks in the "Malden Mirror," and have sent to the defendant's address copies of the same, postage prepaid.

S. M. FAIRFIELD,
Attorney for Plaintiff.

COMMONWEALTH OF MASSACHSETTS, *Middlesex,* } *ss:*

First District Court of Eastern Middlesex.

At the first district court of Eastern Middlesex, holden at Malden, within and for said county of Middlesex, on the first day of February, A. D. 1879, E. B. Newhall, plaintiff, and Christina J. Burgess, as defendant, in an action of contract. That on the fourth day of February aforesaid an order of notice was issued and returnable Feb. 24, A. D. 1879, to be published in the "Malden Mirror," and said action is on the trial list for trial in said court for March 10, A. D. 1879, at which time the defendant is defaulted, and on the same day, to wit, March 10, A. D. 1879, H. B. Bryant, Esq., enters his appearance for the said Christina J. Burgess, and enters an appeal in said case, sureties to be furnished on or before March 14, A. D. 1879; that on the twenty-eighth day of February aforesaid order of notice and service thereon is filed; that execution is issued in said case on the twenty-first day of March, A. D. 1879, and returned without service on the thirty-first day of May, 1879, and an alias execution is requested and issued on said thirty-first
41 day of said May, in the year aforesaid, and that on the third day of July, in the year of our Lord one thousand eight hundred and eighty, said execution is returned to said court fully satisfied.

Judgment for damages	833 44
Costs	15 55

COMMONWEALTH OF MASSACHUSETTS, } ss:
Middlesex, }

I, William N. Tyler, clerk of the first district court of Eastern Middlesex, within and for the county of Middlesex, hereby certify that the foregoing is a true copy of the record of a judgment in the case of E. B. Newhall, as plaintiff, and Christina J. Burgess, as defendant, from the records of said court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court thereto, this sixth day of September, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] WILLIAM N. TYLER,
Clerk of the First District Court of Eastern Middlesex.

Execution.

COMMONWEALTH OF MASSACHUSETTS, } ss:
Middlesex, }

First district court of Eastern Middlesex to the sheriffs of our several counties, or their deputies, the constables of any city or town within our said counties, or any or either of them, Greeting:

Whereas Edward B. Newhall, of Malden, in the county of Middlesex, the judgment creditor by the consideration of the justice of our first district court of Eastern Middlesex, holden at Malden, within and for our county of Middlesex, aforesaid, on the tenth day of March, A. D. 1879, recovered judgment against Christina J. Burgess, of Providence, in the county of Providence and State of Rhode Island, the judgment debtor, for the sum of thirty-three dollars and forty-one cents debt or damage, and fifteen dollars and forty-five cents cost of suit, as to us appears of record, whereof execution remains to be done:

42 We command you, therefore, that of the goods and chattels and lands of the said judgment debtor within your precinct you cause to be paid and satisfied unto the said judgment creditor the aforesaid sums, being forty-eight dollars and ninety-six cents in the whole, together with interest thereon from said day of the rendition of said judgment, with fifty cents more for this and a former execution writ, together with your own fees.

Dam	$33 41
Costs	15 55
	$48 96
	50
Interest	1 22
Levy	1 00
Record	25
Copies	2 00
Travel	1 20
Press and post notices	6 00
Publishing	7 00

Poundage	2 03
Attendance	5 00
Deed	3 00
Horse, etc.	1 80
	$81 21

Hereof fail not, and make return of this writ, with your doings therein, unto our said court in sixty days from the date of this writ.

Witness John W. Pettengill, Esq., at Malden, the thirty-first day of May, in the year of our Lord one thousand eight hundred and seventy-nine.

WILLIAM N. TYLER, *Clerk.*

MIDDLESEX, *ss:*

AUGUST 13, 1879.

Received of William C. Dillingham, deputy sheriff, fifty and $\frac{50}{100}$ dollars in full satisfaction of this execution.

EDWARD B. NEWHALL,
Per S. M. FAIRFIELD, *Att'y*

No 1621. 1879.

E. B. Newhall, plaintiff. C. J. Burgess, defendant.

Ex'on	$0 50
Dam.	33 41
Costs	15 55

S. M. FAIRFIELD,
Plaintiff's Attorney.

43 *Answer of L. Thomas Freeman, Warren Elliott, William Hallahan, and Moses F. Eastman. Filed Sept. 6, 1880.*

These defendants, now and at all times hereafter saving and reserving to themselves severally all right of exception to the complainant's bill, for answer thereto severally say that on or about the twenty-second day of June last past they were employed by one Peter Graffam, a defendant herein, to enter the real estate described in the complainant's bill; that these defendants and each of them were and was informed and believed that said real estate was the property of said Graffam; that they were employed to protect the same from the unlawful acts or attempt of this complainant and her agents; that they carefully collected and put together certain furniture and other personal property upon said premises, without injury to the same and with a view to protect the same; that they, or any of these defendants did no damage to the said premises or to anything thereon, but conducted themselves in all respects in a proper and legal manner. And as to all the other allegations in the complainant's bill, these defendants and each of them profess ignorance and deny them and put the plaintiff upon her proof of the same. And these defendants severally submit that all the matters

in the complainant's bill mentioned and complained of, so far as they affect these defendants jointly and severally, are matters which may be tried and determined at law, and with respect to them the complainant is entitled to no relief from a court of equity. And these defendants severally demur to the said bill and the allegations therein, for the reason above submitted.

By their Attorney, A. A. RANNEY.

Answer of William C. Dillingham. Filed Sept. 6, 1880.

This defendant, reserving unto himself all right of exception to the plaintiff's bill of complaint, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, says that he attached the real estate of the complainant, as alleged in her bill of complaint, by virtue of a writ issued out of the district court for the first district of Middlesex, in which writ defendant Graffam was named as plaintiff and this complainant was named as defendant; that he duly levied the execution issued in said court upon said real estate in all respects according to law; that he seized and sold said real estate by virtue of said execution at public auction, after advertising and giving notice in all respects in accordance with and as required by law; that he denies that he unlawfully and without due process of law took or seized or sold said real estate, or that he did not give legal publication of said proposed sale; but he says that he did all things as required by law and nothing that was contrary to law; and he says that he executed to said Graffam, the defendant, the deed of said real estate, a copy of which is annexed to the plaintiff's bill and marked "Exhibit A." And he further says that he did, on or about Jan. 4, 1879, attach the complainant's interest in said real estate by virtue of a writ issued from said district court, in which writ one Newhall, a defendant herein, was plaintiff and this complainant defendant; that afterwards, by virtue of an execution duly issued in said last-named suit, this defendant seized and sold all of this complainant's right, title, and interest in said real estate under due process of law, and in all respects in conformity with law, and he executed, by virtue of such sale, the deed to the defendant Newhall, a copy of which is annexed to the complainant's bill and marked "Exhibit B." And this defendant denies that he proceeded upon said last-named execution in any respect contrary to law and without due process of law. And this defendant denies that he ever conspired with the defendants herein, or any or either of them, or with any one whatsoever, to defraud the complainant out of said real estate or any other property, or to defraud her of any of her legal rights, or to sell said real estate without her knowledge.

44

And in regard to all the other averments and allegations of the complainant's bill, this defendant does not, of his own knowledge, know whether they are true or false, but he denies all that relate

in any way to him and puts the complainant upon her proof
45 thereof. And this defendant submits that all and every the matters in the said complainant's bill mentioned and complained of are matters which may be tried and determined in a court of law, and with respect to which the said complainant is not entitled to any relief from a court of equity. And this defendant demurs to the said bill and the allegations therein, for the reason above submitted.

WM. C. DILLINGHAM,
By his Attorney, A. A. RANNEY.

Replication. Filed Sept. 28, 1880.

The replication of Christina J. Burgess, complainant, to answer of Peter Graffam, Samuel M. Fairfield, Edward D. Newhall, William C. Dillingham, L. Thomas Freeman, Warren Elliott, William Hallahan, and Moses F. Eastman, defendants.

This repliant, saving and reserving unto herself all right and manner of advantage of exception to the manifold insufficiencies of the said several answers of Peter Graffam, Samuel M. Fairfield, Edward D. Newhall, William C. Dillingham, L. Thomas Freeman, Warren Elliott, William Hallahan, and Moses F. Eastman, for replication thereto says: That she will aver and prove her said bill to be true, certain, and sufficient in law to be answered thereunto, and that the said several answers of the said defendants, as aforesaid, are severally uncertain, untrue, and insufficient to be replied unto by this repliant, without this: that any other matter or thing whatsoever in the said several answers contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove to this honorable court, as this honorable court shall direct, and humbly prays as in and by her said bill she has already prayed.

By her Solicitor, EDWARD P. BROWN.

46 *Answer of Herbert F. Dable. Filed Oct.* 4, 1880.

This defendant, reserving unto himself all right of exception to the complainant's bill of complaint, for answer thereunto or unto so much thereof as this defendant is advised is material or necessary for him to answer unto, says: That on the sixth day of July last past, for a good and valid and valuable consideration, this defendant took a good and valid conveyance of the real estate described in the complainant's bill from the defendant Graffam, and the wife of said Graffam; that this defendant took said conveyance in good faith, and upon the record title of the said real estate; that this defendant did not know of the existence of any facts contrary to said record, but that this defendant was informed and believed that said Graffam and his said wife had full legal power and authority to convey said premises to this defendant. And this defendant denies that he ever conspired with said Graffam and with the defendant Fairfield, or

with either of them, or with any person whatsoever, to deprive the complainant of any right that she had in said premises, or in any property whatsoever; and this defendant denies the allegation in the complainant's bill that this defendant had not taken possession of said premises; but says that he did take possession of said premises immediately after the said conveyance thereof, and that the complainant might have known, upon reasonable inquiry, that this defendant had so taken possession. And this defendant denies the complainant's allegation that he is worthless, and denies all knowledge of any fraud whatsoever committed by any person or persons whatsoever against any rights that the complainant ever had in said real estate; and all allegations of the complainant's bill relating to any fraud, this defendant is informed and believes, are false, and without any foundation. And in regard to all the other allegations of the complainant's bill, this defendant denies each and every of them. And this defendant says that he was at the time of the filing of the complainant's bill, and is now, the possessor and owner of said real estate, by a good and valid title; that the complainant had not then
47 and has not now any right, title, or interest in said real estate as against this defendant; and this defendant prays that the injunction issued against the conveyance of the said real estate by this defendant may be dissolved. And this defendant submits to this honorable court that all and every the matters in the said complainant's bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity; and this defendant demurs to the complainant's bill and the allegations therein, for the reason above set forth.

HERBERT F. DOBLE,
By his Attorneys,
A. A. RANNEY.
N. L. GRAFFAM.

Replication to the Answer of Herbert F. Doble. Filed Oct. 8, 1880.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiences of said answer, for replication thereunto says: That she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered thereunto, and that the said answer of the said defendant Doble is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays as in and by her said bill she has already prayed.

By her Solicitor, EDWARD P. BROWN.

48 This cause, entered as aforesaid at the May term of this court A. D. 1880, was thence continued from term to term to

the October term, A. D. 1881, when publication of the testimony was ordered, and the cause was set down for hearing, and fully heard on the twenty-seventh day of December, A. D. 1881, before the Honorable John Lowell, circuit judge, sitting. On the twenty-third day of January, A. D. 1882, the Honorable John Lowell, circuit judge, sitting, the opinion of the court was announced, and it was ordered and decreed that leave be granted to complainant to amend her bill of complaint within sixty days on these terms, that she shall pay all costs to the date of this decree and a reasonable attorney fee to the counsel who conducted the case for the defendants.

On the thirtieth day of January, A. D. 1882, the following motion for leave to file amended bill was filed, namely:

Motion for Leave to File Amended Bill. Filed January 30, 1882.

And now, January 30, 1882, comes the complainant and offers to pay all costs to January 23, 1882, the date of the leave of
49 court granting her permission to amend her bill, and a reasonable attorney's fee to the counsel who conducted the case for the defence as soon as the amount of said costs and of said reasonable attorney fee can be fixed, and says that, by her counsel, she has requested the counsel for the defendants (I. R. Clark, Esq.) to have defendants' costs taxed, but the same has not yet been done. The complainant therefore asks leave to amend without further delay, consenting that her amendment may be stricken out if she shall not pay the costs aforesaid and the attorney fee aforesaid within a reasonable time after the same shall have been fixed by the order of court on motion of defendants.

BELVA A. LOCKWOOD,
Of Counsel for Complainant.

On the same day the Honorable John Lowell, circuit judge, sitting, the aforesaid motion was allowed by the court.

On the thirty-first day of January, A. D. 1882, the follow-
50 ing amendment to bill was filed, namely:

Amendment to Original and Amended Bill. Filed Jan. 31, 1882.

Now comes the complainant in the above-entitled cause, and by leave of court had and obtained moves to amend her original bill of complaint and her amended bill as follows, namely:

1. She offers to pay into court for the benefit of the defendants, Graffam and Doble, the judgment of seventy-three and $\frac{10}{100}$ dollars ($73.10) obtained against her by the defendant Peter Graffam, and the judgment of eighty-one and $\frac{21}{100}$ dollars ($81.21) obtained against her by the defendant Edward B. Newhall, with the legal interest thereon from the dates in which they were respectively rendered.

2. Complainant further moves to so amend her petition as to add the following prayer:

That she may be permitted to redeem her said real estate, situated in the town of Melrose, county of Middlesex, and State of Mas-

51 sachusetts, as set forth by metes and bounds in her original petition, and that the defendants, Peter Graffam and Herbert F. Doble, be required by this honorable court to account to your petitioner for the rents and profits of said estate in a sum per month commensurate with its value, to wit, the sum of one hundred dollars ($100) per month, commencing June 22, 1880.

3. And your complainant further prays that said defendants, Peter Graffam and Herbert F. Doble, be commanded by this honorable court to reconvey to her in due and proper form any right, title, or interest that they may have acquired through or by virtue of the said judgments, and the sales based thereon, in the real estate which forms the subject-matter of this suit, and that complainant may have any other and further relief necessary to perfect in her the title to the said estate.

CHRISTINE J. BURGESS.

52 DISTRICT OF MASSACHUSETTS, *ss:*

BOSTON, *Jan.* 31, 1882.

Personally appeared before the undersigned Christine J. Burgess, complainant in the above-entitled suit, and, being sworn in due form of law, depose and says: "I have read the amendment by me subscribed, and know the contents thereof, and the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true."

ALEX. H. TROWBRIDGE,
Deputy Clerk.

On the eighth day of February, A. D. 1882, the following motion was filed, namely:

Motion that allowance of Motion of Complainant to Amend Bill and Amendment thereof be stricken from Docket, etc. Filed Feb. 8, 1882.

The defendants, Graffam and Doble, respectfully represent
53 that the amendment to complainant's bill, filed since the hearing in said cause, has been allowed without notice to them or their attorneys; that they had requested complainant's counsel to let them know when the proposed amendment was ready, and the motion was to be made so that they might have an opportunity to object and be heard, and prepared in writing objections which they, in that event, proposed to make; that instead of giving that notice and affording an opportunity complainant has prepared an amendment, made the motion, and got it allowed without any notice or opportunity for defendants to be heard in opposition; that defendants desired and had prepared in writing to be used in that event the following objections, to wit:

1. It is not competent for the court to allow an amendment of the kind and as proposed after a final hearing on the merits as the bill then stood and a decision thereon in favor of defendants; and especially as no motion or intimation had been made by com-
54 plainant either prior or at the hearing that she desired or should propose an amendment in that event.

2. That the bill as framed was upon the theory and aspect that the sheriff's sale was illegal and invalid, and that defendants got no title whatever, and was tried on the issue as presented, and all the evidence which was taken bore upon the issue as presented in the pleadings and solely in that aspect, or was competent and material in that aspect.

3. That the bill as amended, or as proposed to be amended, would be multifarious, in a double aspect incongruous and inconsistent, and be a proper subject and ground of demurrer and objection on that account.

4. That if such an amendment was allowed, the defendants should have a right to be heard and to make such objections as they saw fit to the bill as amended, either by demurrer or otherwise; and if they were overruled, defendants should be allowed to answer the bill as amended, take further evidence if desired on the new issue
55 and prayer as amended, and then be heard on the right of redemption; and that the decision of the court granting the complainant a right to redeem in advance of any motion to amend being made and before such an opportunity was afforded was erroneous.

The defendants therefore come and respectfully move and pray that the allowance of said motion and amendment may be stricken off the docket and for a hearing thereon; or if that is denied by the court, they pray that they may be permitted to file said objections and reasons now as of the time when said leave to amend was moved for and before it was granted.

They move and pray further that if the said leave to amend is allowed to stand as against defendants' objections, or is again granted, the defendants may be allowed to demur to said bill as amended; and if that is not permitted or is overruled, that they may then be allowed to answer the bill as amended and take further
56 evidence upon the issue presented. And in support of this application they say that the evidence taken upon the bill as it stood, especially as to notices to complainant of the sale of the property, was competent and introduced upon the issue of good faith and conspiracy, and that there is other and material and important evidence to be taken on this issue of notice and knowledge which was not essential as the case stood before.

I. R. CLARK,
Their Attorney.

UNITED STATES OF AMERICA, }
District of Massachusetts, } ss:

BOSTON, *Feb.* 7, 1882.

Then personally appeared the above-named I. R. Clark and made oath to the truth of the matters and things alleged in the foregoing motion and petition, except as to those therein alleged to be on information and belief, and as to those he believes them to be true.

[SEAL.] HORACE G. ALLEN,
Notary Public.

57 On the twenty-first day of February, A. D. 1882, the Honorable John Lowell, circuit judge, sitting, it was ordered and decreed that thirty days be allowed to defendants Graffam and Doble to answer as to time, amount, and mode of redemption, and not otherwise; and it was further ordered and decreed that the attorney fee to counsel under order of Jan. 23, 1882, be fixed at one hundred and fifty dollars ($150).

On the twenty-fifth day of February, A. D. 1882, the costs of the defendants to January 23, 1882, were duly taxed at two hundred and fifteen dollars and forty-five cents ($215.45).

On the eighteenth day of March, A. D. 1882, the complainant paid into court the costs taxed in favor of defendants, two hundred and fifteen dollars and forty-five cents ($215.45), and on the twentieth day of said March the complainant paid into court the attorney fee to counsel for defendants, one hundred and fifty dollars ($150), and also the commission of one per centum to the clerk of
58 this court on said costs and attorney fee, three dollars and sixty-five cents ($3.65).

On the twenty-first day of March, A. D. 1882, the complainant paid into court for the use of defendants the sum of one hundred and seventy-nine dollars and forty-five cents ($179.45), and the commission of one per centum thereon to the clerk of this court, one dollar and seventy-nine cents ($1.79), and filed the following paper, namely:

Payment into Court for Use of Defendants.

And now, to wit, March 21, 1882, comes the complainant, and pays into court for the use of the defendants, Graffam and Doble, as they may be determined by the court to be entitled to the same, the sums for which the estate of *of* complainant was sold, together with the interest thereon, upon the following sales thereof upon execution:

1. Sale to Peter Graffam, upon execution of said Graffam against this complainant, May 17, 1879	$73 10	
Interest from May 17, 1879, to date	12 46	
		$85 56
59 2. Sale to Edward B. Newhall, upon execution to said Newhall against this complainant, Aug. 13, 1879	$81 21	
Interest from Aug. 13, 1879, to date	12 68	
		93 89
Total amount		$179 45
Complainant also pays one per centum commission to the clerk of this court		1 79
Making a total of		$181 24

This payment into court is made to conform to the opinion of the

court in this cause and under the offer to pay made by the complainant in her amendment to her bill of complaint heretofore filed.

BELVA A. LOCKWOOD,
Of Counsel for Complainant.

On the twenty-second day of March, A. D. 1882, the following demurrer was filed, namely:

60 *Demurrer of Defendants Graffam and Doble. Filed March* 22, 1882.

The defendants, Graffam and Doble, come and ask leave and do demur to the bill in said cause as amended, and for cause say: That no case is set out therein which gives complainant a right of redemption as prayed for; that no case is alleged in equity which entitles the complainant to redeem the property in said bill described; that said bill as framed is not brought for redemption but to set aside the sale by the sheriff as set up therein and void, and that as amended it is framed in a double aspect and is inconsistant; that complainant does not make such an offer or readiness to pay as would entitle her to redeem; that the bill is multifarious as amended.

By defendants' Attorney, N. L. GRAFFAM.

61 I hereby certify that the above demurrer is not intended for any delay.

PETER GRAFFAM.

Signed and sworn to before me.

WILLIAM H. TYLER,
Justice of the Peace.

I hereby certify that in my opinion the within demurrer is well founded in point of law, and that it is not interposed for delay.

N. L. GRAFFAM,
Attorney for Defendants.

On said twenty-second day of March, A. D. 1882, the Honorable John Lowell sitting, the foregoing demurrer was overruled by the court.

On said twenty-second day of March, A. D. 1882, the following answer and replication thereto were filed, namely:

Answer of Defendants Graffam and Doble. Filed March 22, 1882.

The defendants, Graffam and Doble, come and object and except to the action of the court in declining the application made
62 in said cause since the rendering of the opinion therein, and allowance of the amendment of the bill as appears of record, and to the order entered thereon. They protest and do not waive, but reserve all objections to the same, and also more especially because not allowed to demur to said bill as amended.

They say in an answer, so far as allowed to answer, doing the same *de bene esse* and under protest in pursuance of the order of court, as appears of record, that the said bill as amended was not filed until after the right of redemption had expired, and that on the bill as amended complainant has no right to redeem in any mode whatever; that no such offer is made in the bill as amended as entitles complainant to redeem in any mode whatever, or at any time since the time allowed for the same had expired as provided by law; that there was never any such tender or proceedings made or had
63 as would entitle complainant to redeem in any mode whatever under the statutes and laws of the State of Massachusetts; that if the court holds otherwise, and a right to redeem is given, there is due defendants' the sum of two thousand dollars for defendants' expenses and charges, and complainant in any event is bound to pay that amount before redemption can be had.

PETER GRAFFAM.
HERBERT F. DOLE.

By their Attorneys,
A. A. RANNEY.
N. L. GRAFFAM.

Replication. Filed March 22, 1882.

Now comes complainant and joins issue on defendants' answer to her amended bill.

BELVA A. LOCKWOOD,
Of Counsel for Complainant.

64 On the twenty-third day of March, A. D. 1882, the following motion of defendants Graffam and Doble was filed, namely:

Motion of Defendants Graffam and Doble to take further Evidence. Filed March 23, 1882.

The defendants, Graffam and Doble, come and move this honorable court that they may be allowed further time to take further evidence as to notice of sale under complainant's bill as amended, pursuant to the sixty-seventh rule of this court as amended.

By their Attorney, N. L. GRAFFAM.

On said twenty-third day of March, A. D. 1882, the Honorable John Lowell, circuit judge, sitting, the foregoing motion was denied by the court.

On said twenty-third day of March, A. D. 1882, the following motion of defendants Fairfield, Newhall, Dillingham, Freeman, Elliott, Hallahan, and Eastman was filed, namely:

65 *Motion of Defendants Fairfield and others for Costs. Filed March 23, 1882.*

The defendants, Fairfield, Newhall, Dillingham, Freeman, Elliott, Hallahan, and Eastman, in the above-entitled cause come and move this honorable court that they may be allowed their costs therein.

By their Attorney, N. L. GRAFFAM.

On said twenty-third day of March, A. D. 1882, the Honorable John Lowell, circuit judge, sitting, the foregoing motion was denied by the court.

On the twenty-fifth day of March, A. D. 1882, the following paper was filed, namely:

Accounts of Defendants Graffam and Doble. Filed March 25, 1882.

The defendants, Graffam and Doble, in complying with the order of court in the above cause, that they file their accounts claimed by them against complainant, come and do so under protest
66 and waiving no rights whatever, but reserve all objections and exceptions thereto and file accounts, marked "A" and "B," respectively, hereto annexed.

By their Attorney, N. L. GRAFFAM.

"A."

BOSTON, *March* 20, 1882.

Christine J. Burgess to Peter Graffam, Dr.

To execution Graffam *v.* Burgess, with costs thereon	873 10
" interest on same from May 20, 1879, to March 20, 1882	12 43
" cash paid for Newhall equity claim in suit Newhall *v.* Burgess	120 00
" interest on same from April 28, 1880, to March 20, 1882	13 04
" cash paid S. M. Fairfield, att'y in suit Graffam *v.* Burgess and services	210 00
" interest on same from July 17, 1880, to March 20, 1882	21 10
67 To cash paid for keepers in taking possession of premises	217 00
To interest on same from July 20, 1880, to March 20, 1882	21 70
" cash paid for moving furniture and for printing	19 00
" interest on same from July 20, 1880, to date	1 90
" time spent, services rendered obtaining executions, titles to property, use of team, looking after premises	100 00

"B."

BOSTON, *March* 20, 1882.

Christine J. Burgess to Herbert F. Doble, Dr.

To cash paid Peter Graffam by check July 13, 1880, for premises	1,000	00
" interest on same from July 13, 1880, to July 26, 1881, at 7%	71	95
" interest on $1,071.95 from July 26, 1881, to March 20, 1882, at 6%	41	80
To cash paid Peter Graffam July 13, 1880	100	00
68 To interest on same from July 13, 1880, to March 20, 1882, at 6%	10	10
To cash paid to keeper Aug 17, 1880	106	00
" interest on same from Aug. 17, 1880, to March 20, 1882	10	60
" cash paid for insurance on house	21	70
" cash paid for repairs on house	5	00
" cash paid for water tax on house	37	50

On the twenty-ninth day of March, A. D. 1882, this cause came on to be further heard, and was further heard before this court, the Honorable John Lowell, circuit judge, sitting, upon the items of the foregoing account.

On the twenty-first day of April, A. D. 1882, the Honorable John Lowell, circuit judge, sitting, the following decree was entered, namely:

Decree. April 21, 1882.

69 This cause came on to be further heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it is adjudged and decreed as follows:

Whereas the complainant has complied with the conditions heretofore imposed by the court, by paying into court for the benefit of the defendants their costs and a reasonable counsel fee in this cause, and has likewise paid into court the sums of money paid for the purchase of the house and land mentioned in the bill when sold on execution, as set forth in the bill of complaint, with interest; and the defendants, Peter Graffam and Herbert F. Doble, have collected certain rents and have made certain payments, and have made charges for services and for the custody and care of the premises, and these accounts and items have been submitted directly to the court without a reference to a master; and the court finds that the said defendants, Graffam and Doble, are sufficiently paid by the rents received by them for all said charges and expenses:

70 It is now, to wit, April 21, 1882, ordered, adjudged, and decreed that the complainant is entitled to redeem the premises without further payments for such redemption; that the said defendants, Graffam and Doble, are entitled to receive the sums already paid into court for their benefit, and to retain the rents re-

ceived by them; and that the said defendants, Graffam and Doble, make conveyance of the real estate described in the bill to the complainant, free from all incumbrances made or suffered by or through them.

And it is further ordered, adjudged, and decreed that it be referred to Henry L. Hallett, Esquire, a master of this court, to determine the form of the conveyance to be made pursuant to this decree, to receive said conveyance, duly executed, and to deliver the same to the complainant; and the said master is required to report to the court the proceedings before him and his action in the premises.

71 On the sixth day of May, A. D. 1882, the following motion was filed, namely:

Motion to Amend Record. Filed May 6, 1882.

The defendants, Graffam and Doble, in the above cause now come and move this honorable court that the decree of April 21, 1882, or the record in said cause may be so amended that the items produced and proved by said defendants in their accounts filed in said cause as money paid out and received by them may so appear of record, and as allowed or disallowed as such by the court.

By their Attorney, N. L. GRAFFAM.

This cause was thence continued to this present May term, A. D. 1882, when on the third day of July, A. D. 1882, the following report of the master is filed, namely:

Master's Report. Filed July 3, 1882.

72 To the honorable the judges of said court:

I, Henry L. Hallett, the master appointed by the order of said court by its decree of April 21, 1882, "to determine the form of the conveyance to be made" in the above-entitled cause, in pursuance of that decree report: That I have prepared a deed of conveyance to be executed by the defendants in said cause, and have submitted the same to their attorney, N. L. Graffam, Esq.; that said Graffam assents to the form of the deed, but requests that I will present the same to the court, in which request the attorney for the plaintiff unites; and in compliance with said request I herewith return said deed.

Respectfully submitted.

HENRY L. HALLETT, *Master.*

Form of Deed Returned with Master's Report.

73 Know all men by these presents that we, Peter Graffam, of Malden, in the county of Middlesex, and Herbert F. Doble, of Quincy, in the county of Norfolk, in the Commonwealth of Massachusetts, in consideration of the performance by Christine J. Burgess, of the city and county of Providence, State of Rhode Island, of the conditions of redemption stated in a decree of the circuit court of the United States for the district of Massachusetts, in the case of

said Christine J. Burgess *v.* the said Peter Graffam, Herbert F. Doble, *et al.*, Jan. 23, 1882, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quit-claim unto the said Christine J. Burgess all of the right, title, and interest which we or either of us have in and to certain real estate situated in the town of Melrose, in the county of Middlesex, aforesaid, bounded and described as follows:

Beginning at the junction of Emerson and Myrtle streets and thence running south seventy-six (76) degrees east one hun-
74 dred and twelve (112) feet on said Emerson street; thence south nineteen (19) degees west one hundred and seventy (170) feet on the land now or formerly owned by John Shelton; thence north seventy-six (76) degrees west one hundred and twenty-one (121) feet eight (8) inches to said Myrtle street; thence northerly by said Myrtle street one hundred and seventy (170) feet to the point of beginning, with the buildings thereon, containing about nineteen thousand eight hundred and fifty (19,850) square feet.

To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said Christine J. Burgess and her heirs and assigns, to their own use and behoof forever.

And we do hereby, for ourselves and our heirs, executors, and administrators, covenant with the said grantee and her heirs and assigns that the granted premises are free from all incumbrances made or suffered by us, or either of us; and that we will, and our heirs, executors, and administrators shall, warrant and defend the same to the said grantee and her heirs and assigns forever
75 against the lawful claims and demands of all persons claiming by, through, or under us, or either of us, but against none other.

And for the consideration aforesaid, we, Alice S., wife of the said Peter Graffam, and Eunice, wife of the said Herbert F. Doble, do hereby release unto the grantee and her heirs and assigns all right of or to both dower and homestead in the granted premises.

In witness whereof, we, the said Peter Graffam, Herbert F. Doble, Alice S. Graffam, and Eunice Doble, have hereunto set our hands and seals this — day of ——, in the year one thousand eight hundred and eighty-two.

—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]

Signed and sealed in presence of—

—— ——.

COMMONWEALTH OF MASSACHUSETTS, } *ss.*:
—— ——, }

—— —, 188–.

76 Then personally appeared the above-named —— ——, and acknowledged the foregoing instrument to be —— free act and deed.

Before me—

—— ——,
Justice of the Peace.

———, 188–, at —— o'clock and — minutes, — m., received and entered with ——— deeds, libro —, folio —.

Attest: ——— ———, *Register.*

On said third day of July, A. D. 1882, this cause comes on to be further heard in this court, the Honorable John Lowell, circuit judge, sitting, and the report of the master is accepted, and the said defendants, Graffam and Doble, are ordered by the court to execute the deed for the use of the complainant as reported by the
77 master within five days. The defendants, Graffam and Doble, thereupon, in open court, claim an appeal to the Supreme Court of the United States, and give good and sufficient security that they will prosecute their said appeal to effect, and answer all damages and costs if they fail to make their plea good. And said appeal is allowed.

A true record
Attest: JOHN G. STETSON, *Clerk.*

78 The following is the evidence upon which this cause was heard before the Honorable John Lowell, circuit judge, on the twenty-seventh day of December, A. D. 1881:

Evidence for Complainant, taken pursuant to the Sixty-seventh Rule of the Supreme Court of the United States, in Equity, as Amended, before me, Arthur B. Clapp, Special Examiner.

BOSTON, *Dec.* 13, 1880.

Present: E. P. Brown, Esq., of counsel for complainant; I. R. Clark, Esq., N. L. Graffam, Esq., of counsel for defendants.

Deposition of Horace C. Burgess.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

Int. 1. What is your name, age, residence, and occupation?

Ans. Horace C. Burgess; about sixty; Providence, R. I.; grocer.

Int. 2. Are you the husband of Christine J. Burgess, the complainant in this cause?

Ans. Yes.

Int. 3. When were you married to the complainant, and have you lived with her continuously since that time?

Ans. Married in 1868, and have lived with her ever since.

Int. 4. Have you ever been a resident of Massachusetts since 1868, except temporarily?

Ans. No, sir.

Int. 5. Please state of your own personal knowledge whether yourself and wife occupied the estate named in the complainant's bill during any part of the year 1877.

Ans. We did.

Int. 6. Do you know the respondent, Peter Graffam?

Ans. I have seen him once.

79 Int. 7. Please state whether or not you are familiar with the piece of property described in the complainant's bill, and particularly with the buildings on the land belonging to the complainant.

Ans. I am.

Int. 8. Please state whether or not, within your knowledge, said land and building was encumbered with any mortgage at any time during the month of January, 1879.

Ans. Not to my knowledge.

Int. 9. Please state whether the respondent, Peter Graffam, was employed to make any repairs on that property during the years 1877 or 1878.

(Objected to, as immaterial, irrelevant, and incompetent.)

Ans. He was, in rebuilding chimneys.

Int. 10. When, as near as you can fix the time, was it?

(Same objection.)

Ans. September, 1877, I think.

Int. 11. Please state whether the work done by Graffam, the respondent, was done in a workmanlike manner, within your knowledge.

(Same objection.)

Ans. I should say not, sir.

Int. 12. Why not?

(Same objection.)

Ans. It leaked more than it did before.

Int. 13. Did yourself and Mrs. Burgess occupy the premises described in complainant's bill during the year 1878; and, if yea, what part?

Ans. Through the summer months.

Int. 14. Did you occupy said premises with your wife, or either of you, during any part of the year 1879?

Ans. Occasionally, during the summer months; and Mrs. Burgess was there, I think, during some of the winter months.

Int. 14. State fully what part of the summer months you or your wife, or either of you, occupied said premises.

Ans. During the months of May to September during pretty much all of the time.

Int. 16. Do you know James N. Faulkner, of Boston, who formerly lived in Melrose?

80 Ans. I knew him by reputation.

Int. 17. Within your personal knowledge, did said Faulkner occupy said premises during any part of the years 1878 and 1879? If yea, state fully what part.

Ans. From the last of December to March, I think, or it might have been to June.

Int. 18. Did your family occupy said premises immediately after Mr. Faulkner left, in spring of 1879?

Ans. Yes, sir, we were there all summer.

Int. 19. During the period from June 1 to September, when, as you say, you think your family occupied said estate, was the house furnished throughout?

(Objected to, as irrelevant, immaterial, and incompetent.)

Ans. I know they occupied the house from some time in June to September, and I know the house was furnished.

Int. 20. During that period were there servants in the house; was the house open? And if yea, state fully the character of that occupancy, and what if any improvements were going on on the land outside of the house.

(Same objection.)

Ans. It was occupied by Mrs. Burgess, and generally one servant in the house, and laboring men outside improving the grounds and so forth.

Int. 21. During the time, from April, 1879, to September, 1879, was said house advertised as for sale or to let by any notice posted upon the house or within the yard, within your knowledge?

(Same objection.)

Ans. There were boards set up in the yard, and there were cards in the front windows.

Int. 22. Please describe the size of the board you say was set up in the yard, and the cards in the windows, and state whether they gave the public notice to apply to any person; and if so, to whom.

(Same objection.)

Ans. The board in the yard was perhaps fifteen inches long by ten inches wide, and had on it "To let, apply to B. W. Conant;" the window cards merely said "To let," I think.

Int. 23. How many feet, as near as you can estimate, was
81 the board which you say was in the yard from the sidewalk next adjacent to the front boundary line of the estate?

(Same objection.)

Ans. I should say from eight to ten feet from each street.

Int. 24. After September, 1879, and from that time to June, 1880, was said house occupied by any person; and if so, by whom?

Ans. By Mrs. Burgess.

Int. 25. During the period named in the last interrogatory, was the property still advertised? And if so, state in what manner.

(Same objection.)

Ans. By the board and cards.

Int. 26. What board and what cards?

(Same objection.)

Ans. The board that represented the lettering in the yard, and the cards in the windows; the board was taken away to regrade the yard.

Int. 27. Was this the same board referred to in your previous answers?

(Same objection.)

Ans. Yes, sir.

Int. 28. Please state fully what repairs or improvements, either upon the house or land, were made during the period from April 1, 1879, to June 22, 1880, as fully as you are able.

(Same objection.)

Ans. There were new fences built, new floors to the piazzas, old fence that remained on front was all repaired, and new grading done; the grade was changed very materially.

Int. 29. State as nearly as you are able what sum of money was expended on these repairs and improvements.

(Same objection.)

Ans. I should say some $1,000 or $1,200.

Int. 30. During the period while these repairs and improvements were going on, how frequently did you see the property?

Ans. I was there generally once a week, sometimes twice a week, previous to the 22d of June.

Int. 31. Of this sum of money, which you say was expended on said property, what part was out of your own personal funds?

(Same objection.)

82 Ans. I think I let my wife have from $150 to $200, about that time; when she was short of money I let her have some.

Int. 32. Was this sum of money advanced by you all at one time, or from time to time while the improvements were being made?

(Same objection.)

Ans. From time to time.

Int. 33. Please state whether before the twenty-second day of June, 1880, you had any knowledge or information that either of the respondents, Peter Graffam or Edward B. Newhall, had caused said property to be attached or sold at sheriff's sale.

(Same objection.)

Ans. I never knew the first thing about it.

Int. 34. Within your knowledge, did Mrs. Burgess, the complainant, have any information that said estate had been sold at sheriff's sale in any suit in favor of the respondent Graffam or the respondent Newhall prior to the twenty-second day of June, 1880?

(Same objection.)

Ans. I had no knowledge whatever that she did.

Int. 35. In one of your previous answers you stated that you never saw the defendant Graffam but once; please state when that was.

Ans. I saw him at his home the 23d of June, 1880.

Int. 36. Did you have any conversation with him at that time?

Ans. I did.

Int. 37. From the 24th of January, 1879, to 22d of June, 1880, what personal property was there in the house upon the premises described in the complainant's bill which was the property of Mrs. Burgess, your wife? State as fully as you are able, and give the aggregate value of said property according to your best judgment.

(Same objection.)

Ans. The house was furnished all over; a piano in the parlor, upholstered furniture, lace curtains, carpets, etc., all belonged to Mrs. Burgess originally, excepting two small pieces of furniture. I should think the aggregate value was from $2,700 to $3,000.

Int. 38. Was this amount of personal property during all
83 this time in said house and free from any encumbrance, so far as you know?

(Same objection.)

Ans. It was in the house during all the time and free from any encumbrance, so far as I know.

Int. 39. State fully what improvements were made upon the land of said estate during the season of 1880.

Ans. New fence, new piazzas built and fences repaired, and grade of land changed materially, and trees and shrubbery were looked after.

Int. 40. State fully what repairs were made upon the house on the inside.

Ans. Painting, new ceilings where they had been stained, new papering, plumbing, etc.

Int. 41. Please state fully what occurred on or about the 22d of June, 1880, so far as you have personal knowledge.

Ans. I heard by telegraph on the 23d of June that the house had been entered and stripped of all its contents. On the 24th of June I went by the house, and saw three or four keepers in the front yard on the piazzas.

Int. 42. What during the years 1879 and 1880 was the fair valuation of the estate described in the complainant's bill so far as you are able to judge?

Ans. From $9,000 to $10,000.

Int. 43. What became of the personal property that was in said house at the time it was taken possession of by the respondents?

Ans. Peter Graffam told me he took it away.

Int. 44. Have you any personal knowledge on this subject?

Ans. No more than what Mr. Graffam and others told me.

Int. 45. Within your knowledge has any of said personal property ever been returned to yourself or Mrs. Burgess, or have you, or either of you, within your knowledge, ever been notified where the same was?

tled up. He said he had done all he was going to do there; that he meant to be paid for it. I told him I would be very glad to pay him, if he would finish up and stop the leak; that it had put me to a great deal of expense and trouble. He did not set any time he would come.

Int. 14. During any of the interviews you had with Mr. Graffam after he commenced the work referred to in the previous answer and before Jan. 1, 1879, did he threaten you in any form of words? Please state what he said, if anything.

Ans. No, he didn't threaten me.

Int. 15. What person occupied this property in the fall of 1877, if any one?

Ans. I was there during the summer, September and October; I think I left late in November.

Int. 16. Who occupied it during the year 1878?

87 Ans. I was there during the summer and part of the autumn.

Int. 17. Do you know James N. Faulkner, of Boston, who formerly resided in Melrose?

Ans. I do.

Int. 18. Please examine the lease here shown you, and tell me whether the signature "J. N. Faulkner" is that of James N. Faulkner, referred to in your last answer?

Ans. It is his signature.

Int. 19. Is the signature "Christine J. Burgess" your signature?

Ans. It is.

(Complainant's counsel here offers in evidence lease of Christine J. Burgess to J. N. Faulkner, dated Dec. 20, 1878, which is marked "Complainant's Exhibit No. 2, A. B. C., Special Examiner.")

(Objected to, as immaterial and incompetent.)

Int. 20. Please examine the description of the property contained in this lease, and tell me whether that refers to and is intended to cover the property described in your bill of complaint.

(Same objection.)

Ans. It does.

Int. 21. Did James N. Faulkner, described in this lease as J. N. Faulkner, occupy those premises during the period named in said lease from the 20th of September, 1878, to June 1, 1879?

(Same objection.)

Ans. He took possession some time in December, 1878, and I think he occupied nearly up to June. I went into the house the first day of June; I know he paid me up to the first of June; I called at the house in January to see if the furnace I had put in was sufficient to warm the house; I called again in April to engage a party to fix the leak he had spoken about when he took the house, and when I called for my rent.

Int. 22. Are you acquainted with Edward B. Newhall, one of the respondents in this case?

Ans. I saw him once; that is, a man who said his name was Newhall.

Int. 23. Did said Newhall ever transact any business of any kind for you?

Ans. Not to my knowledge.

88 Int. 24. Before bringing the suit which he instituted on Jan. 23, 1879, had said Newhall ever presented you with a bill?

(Same objection.)

Ans. No, sir.

Int. 25. Please state whether or not there was any encumbrance on the real estate, described in complainant's bill, on 23d of January, 1879, within your knowledge.

Ans. Not any, to my knowledge

Int. 26. What was the value of said estate during the years 1879 and 1880, up to the first of last August, if you know?

(Same objection.)

Ans. I have been offered $10,000 and $12,000 for it.

Int. 27. During the years 1878 and 1879 what other property did you have in Melrose besides this real estate?

(Same objection.)

Ans. I had the furniture in the house, black-walnut, marble-top, rosewood furniture, piano, pier glasses, expensive drapery, Brussels carpets, bedding, pictures, china, plated ware, some silver, etc.

Int. 28. Of an aggregate value of what?

(Same objection.)

Ans. From $2,500 to $3,000.

Int. 29. Was any part of this personal property encumbered?

Ans. No, sir.

Int. 30. During the period when you have resided in Providence have you had an agent or some one to look after your estate in Melrose; and if so, who was it;

Ans. B. W. Conant was my agent in Melrose.

Int. 31. How long has he been your agent in Melrose?

Ans. It is a number of years, for he rented the house in 1874 to Rev. Charles Wingate, and he was my agent previous to that, and Mr. Faulkner saw him in regard to the house in 1878.

Int. 32 Do you mean to say that Mr. Conant has been your agent continuously since 1874, in the management of this Melrose property?

Ans. He has.

89 Int. 33. Please state whether or not within your personal knowledge since Jan. 1, 1878, Mr. Conant's name has been conspicuously posted on this estate; and state fully to what extent.

(Same objection.)

Ans. I know in has been there. It was taken away when we were making repairs.

Int. 34. During what portion of the time from Jan. 1, 1879, to Jan. 1, 1880, was his name posted upon the estate as a party to whom the notice to let referred?

(Same objection.)

Ans. It was posted then, but I can't remember the date it was taken away for repairs.

Int. 35. For how long a time was it taken down for repairs? State as nearly as you are able.

Ans. I don't remember.

Int. 36. What sort of a notice was it, which contained the name of B. W. Conant, which was put upon the property, and where was it put?

(Same objection.)

Ans. I think it was "For sale or to let, apply to B. W. Conant." It was in the most conspicuous place; it could be seen on turning the corner of Emerson and Myrtle streets. Part of the time it was advertised in Boston "Journal" and "Transcript" by B. W. Conant.

(Last part of answer objected to, as irresponsive and immaterial.)

Int. 37. From first day of June, at expiration of Mr. Faulkner's lease, during the remainder of 1879 did you occupy the premises yourself?

Ans. Part of the time?

Int. 38. What part of the time.

Ans. I was there all June; I would go home occasionally. I was there in September making repairs. I knew it was advertised then. I was there in October and November; during those months I was making repairs.

Int. 39. Did you ever have any knowledge that this property had been attached or had been sold on execution, either in suit of respondent Graffam or respondent Newhall, prior to June 22, 1880?

(Same objection.)

Ans. I never knew anything about it; if I had I should not
90 have spent the money I have on it. I had no knowledge of it whatever.

Int. 40. Did you ever have any notice of any proceedings upon any execution issued against you on behalf of the respondent Graffam or the respondent Newhall, by which it was proposed to sell any interest you had in any real estate in Melrose?

(Same objection.)

Ans. I never had any notice served on me that any real estate was to be sold.

Int. 41. Were you ever informed by any tenant, agent or attorney of yours that proceedings were to be had on an execution in favor of the respondent Graffam or respondent Newhall, by which your interest in any real estate was to be sold, or had been advertised, or that levy had been made upon same?

(Same objection.)

Ans. I never have been.

Int. 42. When was the first time that you were informed that the property at Melrose had been levied upon by execution, and sold as set out in the answers of respondents Graffam, Newhall and Dillingham?

(Same objection.)

Ans. Never until I received a despatch from Mr. Conant that the house was stripped.

Int. 43. What was this date?

(Same objection.)

Ans. On the morning of June 23, 1880.

Int. 44. Since June 1, 1879, what repairs and improvements have you put on the property described in this bill of complaint? State fully, and when they were made.

(Same objection.)

Ans. I had the chimneys repaired, the leaks stopped, some of ceilings taken down and new ceilings; I had painting done; most of walls have been papered. I had plumbing done, cementing in laundry and cellars and about outside of house, some carpenter work inside, underpinning and flooring of piazzas rebuilt, fences rebuilt and repaired, old brick walks taken up, grounds graded, resodded, and trees tended to. These were made in September, October,
91 November, 1879, and April, May, and June, 1880. I was paying men up to the twenty-second day of June, 1880, the day I left to go to Providence to stay one night to settle a bill for work done on the house and fences. I had paid in advance for the water to sprinkle the grounds until September, 1880.

Int. 45. From June 1, 1879, to June 22, 1880, what sum of money had you expended on repairs and improvements on this property, as stated in your last answer, including funds of your own and those of your husband?

(Same objection.)

Ans. Not far from $1,200; about that.

Int. 46. During what period of time next prior to June 22, 1880, had you occupied this house?

Ans. I was there most of April, May, and June, 1880.

Int. 47. What condition did you leave the house June 22, 1880; whether or not the furniture was set up, carpets on the floor, curtains at windows, and household furniture generally in the order required for housekeeping?

Ans. I left home about 7.45 p. m. to take 7.55 p. m. train on June 21. I left a man to sprinkle the grounds. I fastened all the gates but one, left that unfastened for him to go out, fastened all the doors and windows. I left food cooked, and clothing taken off the line that day was hung up in the house. I told the man who worked for me I expected to return the next night, but I was not able to

return then. I left everything as I usually leave my house to go away for an hour; furniture was set up, carpets on the floor, etc., and everything in order.

DECEMBER 15.

Int. 48. When next after June 21, 1880, did you go to your house, if at all?

Ans. I have never been into the house. I rode past it twice on June 23.

Int. 49. After the defendant Graffam had completed his work on the house in the manner which you have described, and before commencing suit, did he ever call at the house and have an interview with you in relation to the work; and if yea, how many times?

92 Ans. He did call once. I called at his place of business and requested him to come and see what damage the rain had done.

Int. 50. At the time when Mr. Graffam was at your house doing work, or at any time he called at your house, was your house advertised to let, by placard in the windows or by board in the yard?

(Objected to, as immaterial, irrelevant, and incompetent.)

Ans. There was a placard in the window when he called.

Int. 51. Was this the same placard and same board which had upon each the name of "B. W. Conant" as agent of the property?

(Same objection.)

Ans. It was.

Int. 52. Please state whether or not you have ever seen or had possession of any of the personal property belonging to you, which was in your house when you left it on June 21, since that time.

Ans. I have not.

Int. 53. Did you ever, after the twenty-second day of June, communicate or cause to be communicated to respondent Graffam or his counsel your willingness to pay $500 for the redemption of the real estate?

(Same objection.)

Ans. I caused it to be communicated to him.

Int. 54. In what way did you cause this offer to be communicated to him?

(Same objection.)

Ans. Through my attorney.

Cross-examination (*de bene*), by I. R. CLARK, Esq., of counsel for defendants:

Cross-int. 55. What is your business?

Ans. I have never been occupied in any particular business.

Cross-int. 56. Do you know a man by the name of H. B. Bryant?

Ans. Yes, sir.

(It is admitted that H. B. Bryant appeared as counsel of record in the suit of Graffam *v.* Burgess, and Newhall *v.* Burgess, being the

suits referred to in complainant's bill of complaint, and was fully authorized by this complainant so to appear, and employed by her as counsel for that purpose.)

93 Cross-int. 57. Did you ever have any interviews with Mr. Bryant after the default was obtained in the said case of Graffam *v.* yourself?

Ans. I did.

Cross-int. 58. Where did those interviews take place?

Ans. At his office in Boston.

Cross-int. 59. Interviews in regard to this suit?

Ans. I think so.

Cross-int. 60. Do you know whether they were or not?

Ans. I think they were.

Cross-int. 61. Can you recollect anything you talked about with him then?

(Objected to, as not opened in chief.)

Ans. I can't.

Cross-int. 62. Do you recollect why you went to see him about these suits; was there any particular reason for it after they had been defaulted?

(Same objection.)

Ans. I don't know as I could state it just now.

Cross-int. 63. How many times do you think you went to see him after they were defaulted?

(Same objection.)

Ans. I cannot remember, it is impossible for me to tell.

Cross-int. 64. Do you know a lawyer in Boston by the name of Pickering?

(Objected to, as not open in direct examination.)

Ans. I am acquainted with Mr. Pickering.

Cross-int. 65. I understand by your previous testimony that during the winter of 1878 and '79 you resided in Providence; is that so?

Ans. Yes; I visited Melrose in that winter; I remember of putting in a furnace for Mr. Faulkner in December, 1878.

Cross-int. 66. But your home was in Providence, was it not?

Ans. Yes, sir; that was my husband's home.

Cross-int. 67. And you removed to Melrose from Providence about June 1, 1879, did you not?

Ans. I went there June 1, 1879.

94 Cross-int. 68. Your interviews with Mr. Bryant, spoken of above, were after you removed from Providence, I suppose?

Ans. I can't remember.

Cross-int. 69. Did Mr. Pickering, the lawyer spoken of above, ever transact any business for you?

Ans. I have never employed him; he never did any business for me to my knowledge.

Cross-int. 70. Did you ever go to his office in Boston?

Ans. Yes; I have been acquainted with him for a number of years.

Cross-int. 71. What did you go there to see him for?

Ans. I called there to see his father, to ascertain where he was.

Cross-int. 72. How many times have you been there since June, 1879?

Ans. I can't remember.

Cross-int. 73. Where is his office?

Ans. I don't know where his office is now.

Cross-int. 74. Did you ever consult him in regard to the matter of this bill?

Ans. I can't remember what conversation I had with him.

Cross-int. 75. Do you recollect writing to him about the matter of this bill?

Ans. I can't recollect now writing to him.

Cross-int. 76. Do you recollect writing to him in June, 1879, in regard to this matter?

Ans. I can't remember.

Cross-int. 77. Will you swear you didn't?

Ans. I will not.

Cross-int. 78. Can you recall now anything that you said to Mr. Pickering at any of these interviews in regard to this matter?

Ans. No, sir.

Cross-int. 79. Will you swear now that you didn't consult him in regard to this matter since June, 1879?

Ans. I don't recollect of consulting him.

Cross-int. 80. Have you ever been to respondent Newhall's office, in Boston?

95 Ans. I couldn't say that it was Newhall's office; there was a man there who said his name was Newhall.

Cross-int. 81. How did you ascertain where to go to find Mr. Newhall?

Ans. Some one told me; I inquired of some one who directed me there.

Cross-int. 82. Did you then have an interview with the respondent Newhall in regard to his suit against you?

Ans. I did, with the man who called himself Newhall.

Cross-int. 83. Do you recollect when that was?

Ans. I cannot recollect the date?

Cross-int. 84. Summer or winter?

Ans. I think it was in cold weather; I remember I was sick at the time.

Cross-int. 85. The present year, did that interview take place?

Ans. No, sir.

Cross-int. 86. The fall of 1879?

Ans. I can't tell the date.

Cross-int. 87. Did you ever have more than one interview with the respondent Newhall?

Ans. I don't remember of but one interview.

Cross-int. 88. Did you ever have an interview with the respondent Graffam in the summer of 1879?

Ans. No, sir.

Cross-int. 89. When was the last interview you ever had with him?

Ans. I can't give you the date.

Cross-int. 90. Can you fix it approximately?

Ans. It was previous to bringing his suit referred to in his answer.

Cross-int. 91. You have had no interview of any kind with the respondent Graffam since he brought his suit against you, above referred to?

Ans. No, sir.

Cross-int. 92. Do you know S. M. Fairfield, the lawyer who brought the respondent Graffam's suit against you?

Ans. I have seen him.

96 Cross-int. 93. Have you ever had any interviews with him in regard to that suit?

Ans. I have.

Cross-int. 94. Were they before or subsequent to its commencement?

Ans. It seems as though the suit had been commenced; I employed counsel at that time.

Cross-int. 95. Were they before or after the default had been entered in said case?

(Question objected to, assuming the witness knew or knows the time of default.)

Ans. I employed Mr. Bryant as soon as I had knowledge of this, which I think was a day or two previous to the case coming off.

Cross-int. 96. You knew then of the case coming off, did you not?

Ans. Yes.

Cross-int. 97. Have you since the last hearing refreshed your recollection as to the object of your interviews with Mr. Pickering?

Ans. I called on Mr. Pickering in regard to his father and his father's health.

Cross-int. 98. Anything more?

Ans. I don't remember the conversation I had with him.

Cross-int. 99. Did not you know that a judgment had been entered in the respondent Graffam's suit above referred to, when you saw Mr. Pickering?

Ans. No, I did not.

Cross-int. 100. Did not you see Mr. Pickering in relation to his commencing proceedings to have that judgment reviewed?

Ans. I think not.

Cross-int. 101. Are you positive in regard to that matter?

Ans. That is the best of my recollection.

Cross-int. 102. Were you not informed by this Mr. Pickering that a judgment had been entered in this case, and a levy made on the execution on the Melrose property referred to in your bill?

Ans. I have no recollection of his making any such statement to me.

Cross-int. 103. At the time of any of these interviews you

97 speak of with Mr. Pickering did you know that a judgment had been obtained by the respondent Graffam in his suit above referred to?

Ans. I can't remember.

Cross-int. 104. Have you had any interviews with S. M. Fairfield, in regard to respondent Graffam's suit, since judgment was obtained therein?

Ans I don't recollect that I have.

Cross-int 105. Have you written to him in regard to that matter since the judgment was obtained?

Ans. I don't recollect.

Cross-int. 106. Have you written to him at all?

Ans. I don't remember.

Cross-int. 107. Has he written to you since that judgment was obtained, in regard to it?

Ans. I don't remember that he has.

Cross-int. 108. Since judgment was obtained in respondent Graffam's suit have you consulted Mr. Pickering upon any business of any kind other than inquiring about his father's health, as you say?

Ans. I don't remember.

Cross-int. 109. Will you swear that you have not?

Ans. I suppose I have had other conversation.

CHRISTINE J. BURGESS.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of Benjamin W. Conant.

Direct-examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Dec.* 15, 1880.

Int. 1. What is your name, age, residence, and occupation?

Ans. Benjamin W. Conant; forty-four; Melrose, Mass.; druggist.

98 Int. 2. Are you acquainted with the complainant, Christine J. Burgess?

Ans. I am.

Int. 3. Please state whether or not you have had charge of the real estate of Mrs. Burgess, situated on the corner of Emerson and Myrtle streets, Melrose; and if so, for how many years?

(Objected to, as immaterial, incompetent, and irrelevant.)

Ans. I have, for ten or eleven years. I had done nothing without consulting the proprietor.

Int. 4. Did you let the property in 1878 to Mr. J. N. Faulkner, of Boston?

(Same objection.)

Ans. I think I was the means of letting it.

Int. 5. During the years 1878, prior to Dec. 20, and during the

year 1877, did you have the property advertised by placards posted in the windows, and by board in the yard?

(Same objection.)

Ans. I did.

Int. 6. Please describe the placard posted in the windows, and the board posted in the yard.

(Same objection.)

Ans. There was a small piece of cardboard in the window, and the board in the yard was about four feet high, and about three or four feet wide.

Int. 7. What was the size of the pieces of cardboard in the window?

(Same objection.)

Ans. About two-thirds the size of Complainant's Exhibit No. 1.

Int. 8. Were these cards and board posted upon the property during the time it was occupied by Mr. Faulkner?

Ans. I think not.

Int. 9. Were they posted on the property after June 1, 1879; and if so, how soon after?

Ans. I can't tell you, sir.

Int. 10. Prior to October, 1877, for the period of five years, how constantly has this property been advertised to let by placards
99 posted in the window and board in the yard, as you have already stated?

(Same objection.)

Ans. I can't remember.

Int. 11. Prior to June 22, 1880, had you ever received any notice of the attachment of this real estate in a suit in behalf of Peter Graffam against this complainant, or a suit in behalf of Edw. B. Newhall against this complainant?

(Same objection.)

Ans. I never heard of such a thing.

Int. 12. Prior to June 22, 1880, were you ever notified that an execution had been levied on this property in favor of the respondent Graffam or the respondent Newhall?

(Same objection.)

Ans. No, sir.

Int. 13. Prior to June 22, 1880, were you ever notified that the property described in the complainant's bill was advertised to be sold by sheriff's sale on an execution in favor of respondent Graffam or respondent Newhall?

(Same objection.)

Ans. I was not aware of any, previous to the time the goods were taken out.

Int. 14. Were you in the town of Melrose on June 22, 1880; and

if yea, did you see any persons removing personal property from the premises described in the complainant's bill?

Ans. I was, and did see them.

Int. 15. State fully who these persons were, so far as you knew them, and all the conversation that took place between you and them.

Ans. I am personally acquainted with two, Mr. Freeman and William Hallahan. Freeman was the teamster, and Hallahan was putting goods into the wagon. I asked the cause of all this trouble. I conversed mostly with a black-haired man, who appeared to be the keeper in charge; he told me it was about a mason's bill. I asked him the amount, and also asked him for time to telegraph to Mrs. Burgess, and I would see that the bill was paid within ten minutes. He said no, she had had time enough. This was between eight and nine o'clock at night. I stayed there about an hour.

100 (Conversation objected to, as hearsay.)

Int. 16. During the hour you remained there, as stated in your last answer, what was done or what was being done with the household furniture, if anything?

Ans. There were two or three parties bringing it down stairs and putting it into Mr. Freeman's team, which was backed up to the sidewalk.

Int. 17. Please describe the manner in which this was done.

Ans. The furniture was roughly used, and they were cursing and speaking derogatory of the landlady.

Cross-examination (*de bene*) by I. R. CLARK, Esq., of counsel for defendants:

Cross-int. 18. This property has been idle a large part of the time in 1878, and previous thereto, has it not?

Ans. A good deal of the time, yes, sir; I could always let it at a price.

Cross-int. 19. Did you have charge of collection of the rent as late as 1878 and 1879?

Ans. I think not.

Cross-int. 20. You did not have charge of the collection of the rents from Mr. Faulkner?

Ans. No, sir.

Cross-int. 21. I suppose, then, your only duties were to obtain a tenant when it was vacant?

Ans. I used to go and cut the grass, and had two or three employés on the ground in spring and fall, whenever necessary, and paid them.

Direct examination resumed:

DECEMBER 22.

Int. 22. Are you now able to produce the board which you have referred to in your deposition in the answer to ints. 5 and 6?

Ans. Yes, sir.

(Witness here produces board, which is marked by examiner "Complainant's Exhibit No. 3, A. B. C., Special Examiner." Objected to, as incompetent, irrelevant, and immaterial.)

BENJAMIN W. CONANT.

Attest: ARTHUR B. CLAPP,
Special Examiner.

101 *Deposition of James N. Faulkner.*

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Dec.* 15, 1880.

Int. 1. What is your name, age, residence, and occupation?

Ans. James N. Naulkner; age, twenty-eight; Kingston, Mass.; wool broker.

Int. 2. Please examine lease marked "Complainant's Exhibit No. 2," and tell me whether you are the party there described as J. N. Faulkner.

(Objected to, as irrelevant, incompetent, and immaterial.)

Ans. Yes, sir; that is my signature there.

Int. 3. Please examine Complainant's Exhibit No. 1, and tell me whether you are able to identify this photograph as the photograph of the house and premises described in the lease, Complainant's Exhibit No. 2.

(Same objection.)

Ans. I should say it was the same. It is either that or a duplicate.

Int. 4. Did you occupy the premises described in Complainant's Exhibit No. 2 from Dec. 20, 1878, to June 1, 1879?

(Same objection.)

Ans. I moved in about the 20th of December, 1878, and I moved out about June 1, 1879.

Int. 5. Did you occupy the entire premises, or was there another tenant in the premises during this period?

Ans. There was no other tenant there.

Int. 6. During the period when you occupied these premises as the tenant of Mrs. Burgess were you ever notified that an execution had been levied on said real estate in favor of Peter Graffam or Edward B. Newhall, and that said real estate would be sold at sheriff's sale?

(Same objection.)

Ans. No, sir; not to my knowledge.

Int. 7. While in occupation of said premises was there
102 within your knowledge any notice ever posted on said premises, or left on said premises, setting forth in substance that an execution in favor of Peter Graffam or Edward B. Newhall had been

levied on said premises, and that they would be sold at public auction?

(Same objection.)

Ans. No.

Int. 8. When was the first time you heard, either directly or indirectly, that said premises were to be sold on an execution in favor of said Graffam or Newhall, or had been so sold?

(Same objection.)

Ans. I should think about two months ago. I am not positive.

Cross-examination waived.

JAMES N. FAULKNER.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of Henry B. Bryant.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Dec.* 22, 1880.

Int. 1. What is your name, age, residence, and occupation?

Ans. Henry B. Bryant; twenty-nine; Boston; attorney.

Int. 2. You are a member of the Suffolk bar?

Ans. Yes.

Int. 3. Are you the person named as H. B. Bryant who appeared as attorney of record in case of Peter Graffam *v.* Christine J. Burgess, in the District court of the southern district of Middlesex, in the early part of 1879?

Ans. Yes; I am.

Int. 4. Are you also the same person who appeared as attorney of record in the same court, at the same time, in the case of Edw. B. Newhall *v.* Christine J. Burgess?

Ans. I am.

Int. 5. During any part of the year 1879 were you notified, either directly or indirectly, that the property or any property of the defendant, Christine J. Burgess, had been levied upon by
103 execution in favor of either Peter Graffam or Edward B. Newhall, and was advertised to be sold at sheriff's sale on either or both of said executions?

(Objected to, as incompetent, immaterial, and irrelevant.)

Ans. I was not informed of anything in relation to it whatever.

Cross-examination (*de bene*) by I. R. CLARK, Esq., of counsel for defendants:

Cross-int. 6. You were present in court as attorney in both suits referred to in ints. 3 and 4, when the default was obtained.

Ans. Yes; I was there when default was obtained.

Cross-int. 7. Did you have any interviews with the complainant, Christine J. Burgess, after that time?

(Objected to, as incompetent and immaterial, and not opened in chief.)

Ans. I did.

Cross-int. 8. How many?

(Same objection.)

Ans. Perhaps two or three.

Cross-int. 9. How soon after the default?

(Same objection.)

Ans. The first interview might have been three weeks, might have been four. They followed along inside of a few weeks. I cannot specify the particular times.

Cross-int. 10. She saw you at all these interviews in regard to these suits, did she not?

(Same objection.)

Ans. Yes.

Cross-int. 11. You knew that the property had been attached on the writs, did you not?

(Same objection.)

Ans. Yes; I knew that fact.

Cross-int. 12. Can you recollect what occurred at any of those interviews between yourself and Mrs. Burgess?

(Same objection.)

Ans. Yes; I remember some things.

Cross-int. 13. You learned the fact that the property had been attached on the writs from Mrs. Burgess, did you not?

104 (Same objection.)

Ans. I can't recollect whether I got it from her lips or not.

Cross-int. 14. Do you mean in the first instance?

(Same objection.)

Ans. I don't recall my means of knowledge.

Cross-int. 15. How soon after the default did you inform Mrs. Burgess of it?

(Same objection.)

Ans. I know I did not write her about it, and as far as I know she learned it first when she come into my office a few weeks after.

Cross-int. 16. Did you not obtain an extension of the time for taking an appeal in both cases?

(Same objection.)

Ans. I did.

Cross-int. 17. Why was it that you obtained the extension?

(Same objection.)

Ans. In order to give Mrs. Burgess all the time necessary to get here from Providence to take an appeal.

Cross-int. 18. After you had obtained that time did you not take measures to inform her?

(Same objection.)

Ans. I did, but there was a misunderstanding between me and Mrs. Burgess in regard to her address, as that letter and others failed to reach her. I don't say that that letter failed to reach her; I only know from what I learn, that some letters failed to reach her.

Cross-int. 19. What was the subject of those interviews after the default?

(Objected, to as incompetent, immaterial, and because any communication between Mrs. Burgess and this witness is privileged, and subject-matter has never been opened in chief, in any form, and witness is advised he has a right to refuse to answer on the ground of his privilege.)

Ans. I regard these communications as privileged, and I decline to answer.

Cross-int. 20. Did she not see you after the default spoken of above in regard to getting a review of the cases, or getting the judgment in some way set aside?

105 (Same objection.)

Ans. There was some conversation in regard to getting a writ of review.

Cross-int. 21. What, if anything, did you do in regard to getting a writ of review?

(Same objection.)

Ans. I instructed her in regard to the mode of procedure, but did nothing further.

Cross-int. 22. The complainant, Mrs. Burgess, was informed by you of these defaults and the attachment of her property, was she not?

(Same objection.)

Ans. I don't know how Mrs. Burgess became aware of the attachment of her property. In regard to her knowledge of the default, I wrote her that she must be at Malden with sureties to prosecute her appeal within a certain time; I don't think I mentioned the word "default," I don't know whether she understood what I meant or not.

(It is admitted by complainant, C. J. Burgess, that before the entry of judgment against her in respondent Graffam and respondent Newhall suits she had knowedge of the attachment of her real estate in said suits.

HENRY B. BRYANT.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of Herbert F. Doble.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Dec.* 22, 1880.

Int. 1. What is your name, age, residence, and occupation?

Ans. Herbert F. Doble; twenty-nine; Quincy, Mass.; grocer.

Int. 2. Please produce the original deed of Peter Graffam and wife, called for by the subpœna which was served upon you yesterday.

Ans. I do.

(Witness here produces deed of Peter Graffam to himself,
106 dated July 6, 1880, which is marked "Complainant's Exhibit, No. 4, A. B. C, Special Examiner.")

Int. 3. Do you know Samuel N. Fairfield, before whom Peter Graffam, the grantor named in this deed, acknowledged its execution?

Ans. Yes, sir.

Int. 4. How long have you known him?

Ans. I couldn't say positively.

Int. 5. About how long?

Ans. I think I met with him first about a year and a half ago; perhaps longer.

Int. 6. Where was his office in July, 1880?

Ans. 23 Court street, I believe.

Int. 7. Were you present in his office on the sixth day of last July, or upon the seventh, the day following?

Ans. I was there about that time; I couldn't state the exact date.

Int. 8. Why can't you state the exact date; have you no memoranda or other thing in your possesion with which to refresh your memory?

Ans. No, sir; I don't think I have anything that will give me the exact date.

Int. 9. What is the name of your father?

Ans. Enoch H. Doble.

Int. 10. Have you any brothers? If so, give me their names.

Ans. Yes, sir, three; Ernest E., William H., and Arthur H.

Int. 11. Where do they reside? Give the residence of each of them.

Ans. Ernest in Boston, the other two in Quincy.

Int. 12. Were you present in Mr. Fairfield's office during the month of July, when this deed was executed by Mr. Graffam?

Ans. I believe I was.

Int. 13. Have you any doubt about it?

Ans. What do you mean by executed—signed, or when the paper was made out?

Int. 14. I mean, were you present when the deed was made out and signed?

107 Ans. I couldn't say.

Int. 15. Were you present when it was signed by Mr. Graffam?

Ans. Yes, sir.

Int. 16. When was that?

Ans. I couldn't give the date.

Int. 17. Give it as near as you can.

Ans. Some time in the month of July.

Int. 18. What part of the month of July?

Ans. I couldn't say as to that.

Int. 19. Why can't you say?

Ans. I have no way of knowing the exact date.

Int. 20. Can you tell within a week when it was?

Ans. I don't know that I could.

Int. 21. Are you in business for yourself; and if not, by whom are you employed?

Ans. I am in business for myself, in company with my father.

Int. 22. Do you keep a diary?

Ans. No, sir.

Int. 23. How long have you known Peter Graffam?

Ans. Some five or six months.

Int. 24. When did you first get acquainted with him?

Ans. At the time I bought that property.

Int. 25. You never had seen him before?

Ans. No, sir.

Int. 26. Have you ever seen him since?

Ans. I couldn't say positively; I think I have once or twice.

Int. 27. How much money did you pay for this deed and for the property?

Ans. The consideration was $1,600.

Int. 28. Did you pay to Peter Graffam, or any person representing him, the sum of $1,600 in money?

Ans. That is the sum I am to pay him. I paid him, when I took the deed, $1,100.

Int. 29. To him personally $1,100, did you?

Ans. Yes, sir.

Int. 30. When are you to pay him the remaining $500?

Ans. One year from the time I took the deed, I believe.

108 Int. 31. Is this payment of $500, and the time you stated, put in writing in any contract between yourself and Mr. Graffam?

Ans. He has my note for that amount.

Int. 32. Payable to his order?

Ans. Yes, sir.

Int. 33. One year from date?

Ans. I think that was the time given. I would not be positive.

Int. 34. Where did you get the $1,100 which you say you paid Mr. Graffam?

Ans. I don't understand what you mean. I took it out of my pocket, and gave it to him at that time.

Int. 35. When did you put it into your pocket, and where did you get it from when you put it in?

Ans. I drew the money out of the bank for that purpose in the morning.

Int. 36. Out of what bank?

Ans. National Mt. Wollaston Bank, Quincy. I think I am wrong there; I am not positive whether I gave a check on the Wollaston Bank or the Faneuil Hall Bank. I gave him a check and he preferred to have it cashed. A friend went with me to the Faneuil Hall Bank, drew his check, and took mine.

Int. 37. What was the name of that friend?

Ans. Mr. Adams, of Martin L. Hall & Co.

Int. 38. Where is the place of business of Martin L. Hall & Co.?

Ans. On North Market street, opposite Faneuil Hall Market.

Int. 39. What is the full name of Mr. Adams?

Ans. I do not know.

Int. 40. How long had you known Mr. Adams prior to that time?

Ans. I have always dealt with him since I have been in business, and my father has a good while before.

Int. 41. As I understand you, on the day when Mr. Graffam signed this deed you and Mr. Adams were together at Mr. Fairfield's office, 23 Court street, Boston, and you went from there to the Faneuil Hall Bank to get $1,100 in bills; is that correct substantially?

109 Ans. No, sir.

Int. 42. Have you not so testified in your previous examination?

Ans. No, sir.

Int. 43. Then what is the fact?

Ans. We went from the office to Mr. Adams's place of business, and he went over to the bank with us; we didn't draw $1,100, but $1,000, $100 having been paid the day before to bind the bargain.

Int. 44. But the check of $1,000 which you drew was drawn on the day when Peter Graffam signed that deed, was it not?

Ans. I wouldn't be positive about that.

Int. 45. Peter Graffam signed that deed on the day when you drew the $1,000 check, or the day before—one or the other—did he not?

Ans. I wouldn't be positive.

Int. 46. Did you see Peter Graffam sign that deed?

Ans. I am not certain about that point; I saw that it was signed when I took it, and passed the money over.

Int. 47. Do you desire to qualify in any form of words your answer to Int. 15?

Ans. Yes, sir; I wish to change that answer. I wouldn't be positive whether I was present or not.

Int. 48. Why were you able to say in answer to Int. 15 that you saw Graffam sign that deed, and why do you now wish to be understood as testifying that you are not certain about it?

Ans. I hadn't fixed these things in my mind; I don't want to state positively a fact unless I know it to be so, and I do not know whether that was so or not.

Int. 49. Do you keep an individual account in the Faneuil Hall Bank or with the Wollaston Bank, which you referred to in your answer to Int. 36, or is the account a company account?

Ans. It is a company account.

Int. 50. What is the name of the company of which you are a member, whose account is spoken of in your last answer?

Ans. E. H. Doble & Co.

Int. 51. What is the full name of Mr. E. H. Doble?

Ans. Enoch H. Doble.

110 Int. 52. Does E. H. Doble & Co. keep an account at the Faneuil Hall National Bank?

Ans. No, sir.

Int. 53. The bank which you referred to in your answer to Int. 36 as the Wollaston Bank is situated in Quincy, is it not?

Ans. Yes, sir.

Int. 54. And it was on that bank that you drew the check of $1,000, was it not?

Ans. Yes, sir.

Int. 55. Has that check ever been returned to you or your firm from the Wollaston Bank, from which it was drawn?

Ans. Yes, sir.

Int. 56. Will you produce that check?

Ans. I think I could do so.

Int. 57. Will you do so at the earliest opportunity?

Ans. I will endeavor to do so.

Int. 58. Did you draw a check with which you paid the $100 you say was paid the day before the $1,000 was paid?

Ans. No, sir.

Int. 59. Did you take a receipt for that $100?

Ans. I did.

Int. 60. Will you produce that receipt?

Ans. I will if I can find it; I don't know as I could.

Int. 61. Who was present when you paid the $100, and where was it?

Ans. In Mr. N. L. Graffam's office; he was present, and, I think, Mr. Fairfield—I am not positive.

Int. 62. Was Peter Graffam present?

Ans. Yes, sir.

Int. 63. Did Mr. Fairfield and Mr. N. L. Graffam occupy the same office?

Ans. They did.

Int. 64. How long had you been acquainted with N. L. Graffam at the time when you paid this $100?

Ans. We have been acquainted since we were boys.

I wish to correct my answer to Int. 36. I am not positive
111 whether Mr. Adams indorsed my check or not. I am in error as to his giving me his check.

Int. 65. At the time when you paid the $100, had you seen the real estate at Melrose which is described in the deed of Graffam to you, marked "Complainant's Exhibit No. 4"?

Ans. Yes, sir.

Int. 66. When before that day had you seen it?

Ans. I couldn't give the date.

Int. 67. Did you go to Melrose?

Ans. Yes, sir.
Int. 68. Who went with you?
Ans. Mr. N. L. Graffam.
Int. 69. Any one else?
Ans. No, sir.
Int. 70. Did you examine the property?
Ans. Yes, sir.
Int. 71. Did you see any person on the premises except Mr. N. L. Graffam?
Ans. Yes, sir.
Int. 72. Who was it?
Ans. I don't know what his name was.
Int. 73. What was he doing?
Ans. I understood he was a keeper there put in by Peter Graffam.
Int. 74. Who told you he was a keeper?
Ans. I couldn't state positively; the man himself might have told me, or N. L. Graffam.
Int. 75. Were you told why it was necessary to keep a keeper in the place?
Ans. No, sir, I don't know that I was.
Int. 76. After you bought the property you kept the same man as keeper, did you not?
Ans. No, sir.
Int. 77. Did you keep a keeper there after you took the deed?
Ans. I had some one there.
Int. 78. Who was it?
Ans. My brother, E. E. Doble.
112 Int. 79. When did E. E. Doble go to that place as keeper?
Ans. I couldn't say; I didn't say he went there as keeper, but I had him go out there to look after the place.
Int. 80. Why did you have him go out there to look after the place?
Ans. I thought it necessary to have some one there.
Int. 81. Why did you think it was necessary to have some one there?
Ans. I didn't think it safe to leave the house alone.
Int. 82. Why didn't you think it was safe to leave the property alone?
Ans. I thought it would be safer to have some one there.
Int. 83. Please answer the eighty-second interrogatory, and state why you didn't think it safe to leave the property alone.
Ans. It is hardly safe to leave any property alone. It is well to have some one there in case of fire, or in case any one should break in.
Int. 84. You knew that Peter Graffam had had trouble with Mrs. Burgess, did you not?
Ans. No, sir.
Int. 85. You mean to swear that you did not know that Graffam had any trouble with Mrs. Burgess?
Ans. I understood that he did a job for her, that she refused to

pay him, that he put an attachment on and had a sheriff's deed of the place. I understood he wished to sell it. I had a party to look it up to see that the proceedings were all straight; he did find them so, and I purchased the place.

Int. 86. Who was the party who looked up the title for you?

Ans. Mr. N. L. Graffam.

Int. 87. What did he charge you for his services in looking up the title?

Ans. I don't know what he did charge. I have not settled with him. I have had a running account with him for a good while.

Int. 88. Has he ever presented you with any bill for looking up the title to this piece of property?

Ans. No, sir.

113 Int. 89. Has Mr. N. L. Graffam rendered you any bill for professional services of any kind since the seventh day of last July?

Ans. I don't think he has. He has done considerable business for the company since that time, and some for me; but I have had no bill from him.

Int. 90. Who told you of the facts stated in your answer to the eighty-fifth interrogatory, regarding Peter Graffam's attachment on this property, etc.?

Ans. Mr. N. L. Graffam.

Int. 91. Did you understand that the property described in Graffam's deed to you, marked "Complainant's Exhibit No. 4," had any encumbrance of any kind upon it, or did you understand that it was free and clear?

Ans. I did not understand that there was any encumbrance upon it.

Int. 92. Did you understand that it was free and clear?

Ans. Yes, sir.

Int. 93. How long did your brother, Mr. E. E. Doble, continue in possession of that property at Melrose?

Ans. I don't know.

Int. 94. Give us your best judgment.

Ans. He stayed there until I rented the place.

Int. 95. When did you rent it, and to whom?

Ans. Mr. N. L. Graffam did the business for me. I don't know the name of the party. I couldn't say whether it was the 1st of August or 1st of September.

Int. 96. Was the lease in writing?

Ans. No, sir.

Int. 97. Have you received any rent from the premises since they were let?

Ans. Yes, sir.

Int. 98. How much?

Ans. Ten dollars a month.

Int. 99. Prior to your taking the deed from Peter Graffam, marked "Complainant's Exhibit No. 4," were you informed in any manner whatsoever what was the assessed valuation of that property in the town of Melrose?

Ans. No, sir.

Int. 100. When you went to see it the first time what did you consider the property worth?

Ans. I did not understand what real estate was worth there so well as at home. I supposed from three to four thousand dollars.

Int. 101. You then understood that before you took your deed that you were buying the property for about one-half of what it was worth in your judgment, did you?

Ans. Yes, sir.

Int. 102. Why did you pay a part of the consideration in a note?

Ans. It suited my own convenience better to do so.

Int. 103. Why did it suit your convenience better?

Ans. I didn't care about drawing too much out of my business.

Ans. 104. All your available means, as I understand you, were in your business, were they not?

Ans. In my business and in real estate, they were all invested.

Int. 105. Will you explain what induced you to buy this piece of property, and in its purchase use all your available means and take upon yourself the burden of giving a note, the property being situated at a distance from your place of business?

Ans. I understood Mr. Peter Graffam wished to sell the place, and I thought it a good opportunity to buy.

Int. 106. Is that the only reason?

Ans. The only reason was, I thought it a good opportuity to invest, or a good investment, rather.

Int. 107. What was the reason given to you why you were permitted to buy this property for $1,600, when on your own judgment it was worth $3,000 or $4,000?

Ans. The reason was this man only had a sheriff's sale title to back him up, and a man would not pay what it was worth with only that to back it.

Int. 108. Haven't you already testified that your lawyer whom you employed to look up the title, Mr. N. L. Graffam, told you in substance the title was good?

Ans. No, sir.

Int. 109. Did he tell you it was good?

Ans. I testified I had him look up the proceedings to see if
115 they were straight and right. He told me the proceedings were all right.

Int. 110. Will you now answer the last interrogatory, and tell me if Mr. Graffam told you the title was good; and, if not, did he point out any defect in the title?

Ans. He told me the proceedings were all straight, and consequently I presumed the title was good; he didn't point out any defect in the proceedings or title.

Int. 111. To whom did you deliver the $100 which you say you paid to bind the bargain?

Ans. To the man I made the bargain with, Mr. Peter Graffam.

Int. 112. Who was present when you delivered to him the $100 in bills?

Ans. I couldn't say positively.

Int. 113. To whom did you deliver the $1,000 in bills when you paid it on account of the purchase of this property?

Ans. Peter Graffam.

Int. 114. Who was present when you delivered the $1,000 to Peter Graffam?

Ans. Mr. Adams, referred to above.

Int. 115. Where were you?

Ans. At the Faneuil Hall Bank.

Int. 116. Did you receive the deed simultaneously with the delivery of the $1,000?

Ans. I couldn't say positively whether it was then or when I gave him the check. I gave him the check at Mr. Graffam's office; the check he wanted cashed, so we went down to the bank to have it cashed. It was on the same day.

Int. 117. How soon after the delivery of the $1,000 was it that you sent your brother down to Melrose to take possession of the property?

Ans. I couldn't say positively.

Int. 118. Did you take from Peter Graffam any paper or agreement in writing when you paid him the $1,000 and took from him the deed marked "Complainant's Exhibit No. 4"?

Ans. Nothing more than the deed.

Int. 119. Did you have with him an oral agreement or understanding by which, if the property was recovered from you, your money, or any part of it, should be returned to you?

116

Ans. I believe there was.

Int. 120. What was it? State it in full.

Ans. I don't think I could; I haven't got the agreement with me. I haven't it all, as to that matter; I didn't make much account of it.

Int. 121. Where is it?

Ans. I don't know.

Int. 122. Who had it when you last saw it?

Ans. I never saw it.

Int. 123. Who had it when you last heard of it?

Ans. Mr. N. L. Graffam did the business for me; there was some talk of such a paper being drawn up, but whether there was or not I don't know.

Int. 124. You understand, do you not, that if this property were taken from you by Mrs. Burgess, that Peter Graffam is under obligation to return you your money, do you not?

Ans. No, sir.

Int. 125. What is the understanding? State it fully.

Ans. I couldn't do it. I have nothing to state it from.

Int. 126. Please state your recollection of it.

Ans. I left that matter entirely with Mr. N. L. Graffam. I don't know what he did do about it.

Int. 127. What did you tell him to do about it?

Ans. I don't remember what the instructions were I gave him in regard to it.

Int. 128. State them as fully as you remember.

Ans. I couldn't make any statement of them.

Int. 129. What did you intend to tell him?

(Objected to, as incompetent, irrelevant, and immaterial.)

Ans. I left that business with him; I can't answer as to that. He did the business for me, and I left it all with him.

Int. 130. Left what business with him?

Ans. The business referred to before then.

Int. 131. What business is that?

117 Ans. Relating to the understanding between Peter Graffam and N. L. Graffam for myself.

Int. 132. You left it with N. L. Graffam with some instructions to protect your interests in the premises, did you not?

Ans. I left it altogether to his judgment in regard to that.

Int. 133. And your desire was that he should so exercise his judgment as your counsel so that you should be protected in the event this property should be recovered from you, was it not?

(Same objection.)

Ans. Yes, sir.

Int. 134. And you have never had occasion to complain that your counsel has not taken all the necessary steps to protect you as you instructed him, have you?

(Same objection.)

Ans. No, sir.

Int. 135. Will you, in the event of your inability to find the check for which you drew the $1,000, bring in your check book containing the stub from which said check was taken, showing the stubs immediately preceding and following the same?

Ans. I don't know that I should have any objections in doing so.

(Adjourned.)

DECEMBER 23.

Int. 136. Are you able now to produce the memorandum you received from Peter Graffam on the day of July last when, as you say, you paid $100 to bind the bargain?

Ans. I am able to produce the memorandum, only I was in error as to the amount, which was $50 instead of $100.

(Receipt is here produced in evidence by witness, and is marked "Complainant's Exhibit No. 5, A. B. C., Special Examiner.)

Int. 137. Are you now able to produce the check which you say you gave to or caused to be cashed for the benefit of Peter Graffam on the day when you took from him the deed which is marked "Complainant's Exhibit No. 4"?

Ans. I am. I was in error as to its being $1,000. I find it is $1,050.

(Witness here offers in evidence check for $1,050 drawn on
118 National Mt. Wollaston Bank, signed by E. H. Doble & Co., dated July 13, 1880, which is marked "Complainant's Exhibit No. 6, A. B. C., Special Examiner.)

Int. 138. Please examine the receipt marked "Complainant's Exhibit No. 5," dated July 12, 1880, and tell me in whose handwriting it is, if you know.

Ans. I couldn't say positively. I think it must be Mr. Fairfield's or Mr. N. L. Graffam's.

Int. 139. Referring to Complainant's Exhibit No. 5, please tell me if you saw Peter Graffam sign his name to that receipt.

Ans. I couldn't say positively as to that. I gave the money to N. L. Graffam, who paid it over to him. I couldn't say whether I was present when he signed the receipt or not.

Int. 140. Referring to check marked "Complainant's Exhibit No. 6," please tell me in whose handwriting is the face of the check, including the signature.

Ans. It is my own.

Int. 141. Where were you when you filled that check and wrote the signature of E. H. Doble & Co. at the bottom of it?

Ans. In N. L. Graffam's office.

Int. 142. At the time when you wrote that check did N. L. Graffam and Mr. Fairfield occupy the same office, and was Mr. Fairfield present?

Ans. They did, but I am not positive whether Mr. Fairfield was present or not.

Int. 143. Referring to Complainant's Exhibit No. 6, check of July 13, please state whether you saw Peter Graffam put his signature on the back.

Ans. Yes, sir.

Int. 144. Where was it done? Give place and name of all persons who were present.

Ans. At the Faneuil Hall Bank. Mr. Adams was present.

Int. 145. Do you know who put upon the back of the check, Complainant's Exhibit No. 6, the characters "M. L. H. & Co."?

Ans. I am pretty positive Mr. Adams put them on at the bank. We went into Mr. Adams' office; he thought he could cash
119 the check for me. He didn't have enough money there, and said he would go over to the bank.

Int. 146. This check, Complainant's Exhibit No. 6, was drawn on the day of its date, was it not?

Ans. Yes, sir.

Int. 147. And this memorandum, Complainant's Exhibit No. 5, was received by you on the delivery of $50, and both on the day of its date, were they not?

Ans. Mr. N. L. Graffam received it at that time.

Int. 148. And when was this memorandum, Complainant's Exhibit No. 5, received by you from N. L. Graffam?

Ans. This morning I got it; I asked for it yesterday, and got it this morning.

Int. 149. Referring to deed of Peter Graffam to you, marked "Complainant's Exhibit No. 4," please state fully, if you know, how the erasure came in the fifth line of the first page, following the printed words "paid by."

Ans. Mr. N. L. Graffam and myself talked of buying this place to-

gether; he was to furnish half the money and I half; the deed was in his name; he was to take charge of the property. He failed to procure the money, and I furnished the whole of it, and the deed was made to me, and he is not now concerned in it any way.

Int. 150. So that originally, if I understand you, the name of Nelson L. Graffam appeared where the name of Herbert F. Doble now appears. Is that correct, as you understand it?

Ans. Yes, sir.

Int. 151. And that erasure, as you are advised, was made on the day when the check of $1,050, marked "Complainant's Exhibit No. 6," was drawn, was it not?

Ans. Yes, sir.

Int. 152. Was that erasure made in your presence?

Ans. No, sir, I don't think it was; I don't remember about it.

Int. 153. Did you ever see Alice S. Graffam in your life, to your knowledge?

Ans. No, sir.

Int. 154. On the 13th of July last, when you drew the check Complainant's Exhibit No. 6, did you see Alice S. Graffam, or any
120 lady purporting to be Alice S. Graffam, in the office of Samuel M. Fairfield or Nelson L. Graffam?

Ans No, sir.

Int. 155. Then on the 13th of July, when you drew the check, Complainant's Exhibit No. 6, you understood that Peter Graffam and Alice S. Graffam, his wife, had executed and acknowledged this deed, Complainant's Exhibit No. 4, with the name of Nelson L. Graffam written in it as grantee, and that subsequently without any further acknowledgment or execution the name of Nelson L. Graffam was erased, and your name, Herbert F. Doble, was inserted; is that correct?

Ans. I am not positive whether I saw it erased or not, but I knew the deed was made out to Nelson L. Graffam; when we talked of buying it together it was to be in his name, and after I concluded to take the whole of it the deed was to be made to me.

Int. 156. Please examine Complainant's Exhibit No. 4, deed of Graffam to yourself, and tell me if it is not the fact that the space in the eighth line from the top, after the word "said," where there now appears the name of Herbert F. Doble, was not a blank space when you first saw this deed, and also same in the space where your name now appears in the "habendum" clause in the second line from the bottom.

Ans. I don't think it was blank. I think the deed is just the same now as when I first saw it. I couldn't say whether the deed was made out correctly or not. I left it with Mr. Graffam. I don't know that I read the deed entirely through.

Int. 157. In whose handwriting is that part of Complainant's Exhibit No. 4 upon the first page, which includes all except printed matter?

Ans. I suppose it to be Mr. Fairfield's.

Int. 158. Nelson L. Graffam, referred to in your several answers to this deposition, is the same person who is now present, is he not?

Ans. Yes, sir.

Int. 159. Where does he reside?

Ans. Boston.

Int. 160. Where did he reside in July last past?

121 Ans. Boston.

Int. 161. Did he ever reside in Quincy, within your knowledge?

Ans. No, sir.

Int. 162. Have you ever had any correspondence with Peter Graffam in regard to this transaction, either before or after the thirteenth day of last July?

Ans. No, sir.

Int. 163. Have you ever had any correspondence with Nelson L. Graffam in regard to this matter—either received letters from him or written letters to him?

Ans. No, sir, I have had no occasion to; I see him every day or two.

Int. 164. On the 13th of July last, or before that day, were you informed by Mr. Fairfield or Nelson L. Graffam or Peter Graffam that Mrs. Burgess, the complainant, had filed in the United States circuit court a bill for the redemption of this property conveyed to you?

Ans. No, sir.

Int. 165. When were you first informed of the fact?

Ans. I think Mr. N. L. Graffam told me the next day or a few days after; I couldn't say positively whether it was the next day or later.

Int. 166. When you received this deed, Complainant's Exhibit No. 4, from Peter Graffam, what did you then next do with it?

Ans. I left it with N. L. Graffam to be recorded; it remained at registry of deeds until yesterday.

Int. 167. Did you give him any money with which to pay for the recording?

Ans. I don't think I did at that time; I don't remember.

Int. 168. Have you ever paid him for the recording of the deed since that time?

Ans. He has both paid out and received money for me since that time. I have had no settlement and do not know how we stand.

Int. 169. Have you in your possession or in the possession of N. L. Graffam, your attorney, or any other counsel, any other

122 papers relating to this transaction, which you have not now produced?

Ans. No, sir.

Int. 170. Have you ascertained the name of tenant who occupies the premises at Melrose, as stated in your deposition yesterday?

Ans. No, sir; I neglected to do that.

Int. 171. Will you now consult with N. L. Graffam, your counsel, and after the consultation tell me the name of the tenant who occupies that property?

Ans. Yes, I will do so.

Int. 172. Have you consulted with your counsel, and are you now able to state the name of the tenant who occupies that property?

Ans. I have; I think the name is Sanderson.

Int. 173. Please give us the full name.

Ans. That I couldn't do.

Int. 174. Will you ascertain the full name of the tenant and produce it at a subsequent time?

Ans. Yes, sir.

Cross-examination by I. R. CLARK, Esq., of counsel for defendants:

Cross-int. 175. Are you associated in business with any one; if so, what business, with whom, and what is the name of your firm, and where is your place of business?

Ans. I am associated with my father, E. H. Doble, in the retail grocery and dry goods business, at West Quincy, under the firm name of E. H. Doble & Co.

Cross-int. 176. Refer to Complainant's Exhibit No. 6, and state why you gave the firm check.

Ans. We are accustomed, my father and myself, to draw on the partnership funds for individual purposes when we didn't have the requisite amount; that being more money than I wished to take out of my business at that time, I borrowed of J. W. Robinson $1,000, which I deposited for the company.

Cross-int. 177. Refer to Complainant's Exhibit No. 6, to the initials M. L. H. & Co. on the back thereof, which you say were
123 written thereon by Mr. Adams, and state of what firm Mr. Adams was a member on July 13, 1880.

Ans. Of the firm of Martin L. Hall & Co.

Cross-int. 178. Examine Complainant's Exhibit No. 6, and state if you find any words on the face of the same printed in blue ink; if so, what?

Ans. Yes, sir. "Faneuil Hall National Bank, Boston. Counter, July, paid."

Cross-int. 179. When, if you know, were those printed words placed thereon, and how?

Ans. At the time the money was paid by the cashier of that bank.

Cross-int. 180. Referring to Complainant's Exhibit No. 5, please explain why that receipt was taken in the name of Nelson L. Graffam.

Ans. Because at that time I supposed that Nelson L. Graffam was to buy one-half of the place with me.

Cross-int. 181. Who furnished the $50 paid to Peter Graffam, mentioned in Complainant's Exhibit No. 5?

Ans. I did.

Cross-int. 182. How and when?

Ans. I paid it in bills to Mr. N. L. Graffam at that time, in the passageway just outside of his office.

Cross-int. 183. Have you any agreement with Peter Graffam, made either at the time of the sale of the property mentioned in Com-

plainant's Exhibit No. 4, subsequently or previously, in regard to that property?

Ans. Yes, sir, I have.

Cross-int. 184. Is that agreement oral or in writing?

Ans. In writing.

Cross-int. 185. Where is it, if you know?

Ans. Mr. Peter Graffam has it.

Cross-int. 186. Is there any contract, understanding, or agreement of any kind between yourself and Peter Graffam touching that property, other than the one referred to in your previous answer?

Ans. No, sir.

124 Cross-int. 187 Did you take back from Peter Graffam any written or oral contract touching that property?

Ans. No, sir.

Cross-int. 188. In your answer to direct int. 31 you say he has your note for the amount of $500; by the word "note" do you refer to any written paper other than the contract referred to in your answer to cross-int. 183?

Ans. No, sir.

Cross-int. 189. Were you present when the $50 was paid to Peter Graffam?

Ans. I couldn't say positivily; I think I was.

Cross-int. 190. When did you obtain possession of complainant's Exhibit No. 6, after you had given it to the Faneuil Hall Bank?

Ans. It came from the National Mount Wollaston Bank with my other checks.

Cross-int. 191. In the same form then as now?

Ans. Yes, sir.

Cross-int. 192. Where has this check been kept since it came back to you from your bank?

Ans. It has been filed away at my office in my store at Quincy.

Direct examination resumed:

Int. 193. What is the address of J. W. Robinson, named in your answer to cross-int. 176?

Ans. Quincy, Mass.

Int. 194. Have you repaid J. W. Robinson the $1,000 you say you borrowed of him?

Ans. No, sir.

Int. 195. When did you borrow it? Please give the date as near as you are able.

Ans. It was within a few days of the time I drew the check.

(Counsel for parties here agree that the original agreement referred to in cross-int. 183 and answer shall be produced by respondents' counsel.)

HERBERT F. DOBLE.

Attest: ARTHUR B. CLAPP,
Special Examiner.

125 *Deposition of Edward P. Brown.*

Direct examination by W. F. GRIFFIN, Esq., of counsel for complainant:

BOSTON, *Dec.* 23, 1880.

Int. 1. What is your name, age, residence, and occupation?

Ans. Edward P. Brown; Boston; lawyer.

Int. 2. Do you know Christine J. Burgess, and are you counsel for her in this case?

Ans. I do know Mrs. Burgess, and I have acted as counsel for her in this matter and in matters directly connected with this, since the second day of last July, and am of counsel of record in this case.

Int. 3. Do you know Samuel M. Fairfield, one of the respondents in this case?

Ans. I do.

Int. 4. As counsel for Christine J. Burgess, did you ever have an interview with Samuel M. Fairfield in regard to the redemption of the property described in complainant's bill?

Ans. I did, on the eighth day of July last.

Int. 5. State fully how you came to have an interview with said Fairfield, when it was, and all that took place at that interview between yourself and said Fairfield.

Ans. During the time between the 2d of July last and the 8th of same July I had investigated the record in connection with the two suits of Peter Graffam against this complainant, and Edward B. Newhall against this complainant, and I had learned that Samuel M. Fairfield, one of the defendants in this case, had in those suits acted as counsel for both Graffam and Newhall. This fact, together with other information communicated to me by Mrs. Burgess, led me to go and see Mr. Fairfield on the 8th of July. I found him at his office in what is called the Adams building, No. 23 Court street. I think I have never seen Mr. Fairfield before, and on stepping into a room where I saw his name on the door, I inquired for Mr. Fairfield, and a young man who was sitting at a desk, who was the only person in the room, responded that that was his name. I
126 asked him if he was counsel for Peter Graffam. He replied that he was. I then introduced myself, stated to him that I was counsel for Mrs. Burgess, and had come to see him for the purpose of ascertaining what, if anything, could be done by the way of recovering the property back for Mrs. Burgess; he answered in substance—I cannot state his exact words—that I was the fifth lawyer who had been to see him in that matter, and he inquired why it was, and if it was a fact that Mr. Lynde was no longer of counsel for Mrs. Burgess. I told him I did not know anything about Mr. Lynde's connection with the case, further than that I understood that he (Fairfield) had agreed with Mr. Lynde that Mrs. Burgess could have a deed of the property on payment to Peter Graffam of the sum of $1,100; and that subsequently to the time of that offer by Mr. Fairfield, Mr. Lynde had received a second offer from him, Fairfield, the substance of which was that Mrs. Burgess might redeem

the property and receive Peter Graffam's deed on payment of the sum of $750. He said in reply that he was still willing that Mrs. Burgess should have the property for the sum of $750, if it could be paid immediately; and in that connection he added that it was his purpose to go to the White Mountains, and he wanted the matter settled before he went. I stated to him in reply that I would pay to him forthwith the sum of $500 for Peter Graffam's deed of the property; to which he replied he would not take that sum, and would be unwilling to take the sum of $750 unless he should receive on behalf of Peter Graffam a full discharge of all liability on account of the removal from the house on the premises the personal property belonging to Mrs. Burgess and others. I stated to him that the damage to the personal property had been very large, owing to the manner it had been taken out of the house, as I had been informed, and that Mrs. Burgess had been advised by me that she and others owning the personal property had a right of action to recover the value of that personal property; to which he replied he did think she had. I then asked him if he claimed he had ever notified Mrs. Burgess or her husband that that property was at their disposal, to which he replied he never had, and he didn't understand it was necessary. I asked him if he claimed, as a lawyer, that his client, Peter Graffam, could hold the real estate under the circumstances under which it sold.
127 He wanted to know what circumstances I referred to. I told him that Mrs. Burgess had had no knowledge of the levy on either of the executions, or of the subsequent sale of the property; that she had continued in ignorance of the fact it had been sold, and that she had been constantly spending money on the place since the sale had taken place; that I had examined the officers' returns on both the executions, and the returns did not show that any notice of the levy and sale had been served upon any person within the Commonwealth, although Mrs. Burgess had an attorney of record in both the suits; that she had an agent who had a notice posted on the premises, and that at the time of the levy and sale she had a tenant in possession of the premises. He replied to this that it didn't make any difference; that the officer had done everything which the law required. I asked him how he could make up the sum of $750 as a charge to be paid by Mrs. Burgess before she could redeem the property, when, according to my figures, the sum total of both the executions, including the orignal debts, costs, and expenses of sheriff's sale, was less than $200. He replied that since the sale he had spent a great deal of his own time, and that his client, Peter Graffam, had spent a great deal of his time in watching the property, and that he thought they should both be paid liberally. I asked him what was the occasion of watching the property. He said they watched the property to see what Mrs. Burgess was doing with it until the year expired, and that since that he had employed men to watch the property in order to ascertain when Mrs. Burgess was away, so that they could get in and take possession. He said that arrangement continued until the 22d of June, when he received a dispatch at his office in Boston, stating that Mrs. Burgess was away; that then he took some person with him from Boston, as a keeper, went to Melrose on the next train, and assisted in

opening one of the back windows of the house, and went in and took out the property. I said to him, "what was the need of your watching the property? Did you not understand that before the year had expired from the date of the sale on the execution of Peter Graffam against Mrs. Burgess, Edward B. Newhall, the purchaser of the right of redemption under the subsequent sale on his execution, was bound to come in and redeem from the sale to Peter Graffam or loose his debt?" To which he replied that he understood that very well; that he advised
128 his client, Peter Graffam, to purchase the Newhall title by sheriff's sale, and wait until the expiration of the year from the sale to Newhall before the matter was stirred up, and he added—I give his language almost *verbatim*—"Mr. Brown, we have had trouble enough with this woman, and we never intended that she should redeem this property if we could help it." I asked him what trouble he had had with Mrs. Burgess further than the ordinary trouble with the collection of a debt. He asked me if I knew Mrs. Burgess's reputation, to which I replied that I did not. He then says, "You go and ask Mr. Lynde and Mr. Harding or Mr. Pickering; they have all been obliged to sue her for their fees, and when we commenced our suits we didn't intend to give her any chance, except what we were absolutely obliged to give her by law." He then says to me, "If you don't look out she will beat you." I replied to him it was my opinion if he had proceeded against Mrs. Burgess in this way, had sold her property and so conducted himself in the proceedings as to keep her ignorant of them, that I thought a court of equity would permit her to redeem He then asked me if Mrs. Burgess claimed that she had no knowledge of the levy and the sale, to which I replied she did so claim to me. He then said that Mrs. Burgess must have known it, for she had counsel who knew of the attachment. I then stated to him, as he had described Mrs. Burgess as a resident of a foreign State, that there was no presumption that she knew what proceedings would follow the attachment under the law of Massachusetts. In this connection or in another, I am not positive which, he repeated that when they went into this matter they intended to clean her out. I asked Mr. Fairfield during the interview, but I cannot say in what connection, whether there was ever any notice sent to Mrs. Burgess by mail, and he said there was none to his knowledge. I then asked him if Peter Graffam still held the title to the real estate, and added that if my clients concluded to pay the money I wanted it attended to immediately, and added that I would try to let him know the next day, before, I think I said, two o'clock. He replied that Mr. Graffam still held the title to the property; that if anything was to be done about it it must be done before he left his office the next day, inasmuch as on the third day it was his desire to start for the
129 White Mountains. I told him I would endeavor to let him know, and left his office. This is the substance of the whole interview as I recollect it, except where I have endeavored to use his exact form of words. I did not afterwards see Mr. Fairfield, a on the next day it was communicated to me that Peter Graffam ha

offered the property for less than $3,000 to a gentleman in Melrose, and I immediately prepared the bill in this case.

Int. 6. Do you know William C. Dillingham, deputy sheriff for Middlesex county, one of the respondents in this case?

Ans. I do.

Int. 7. In your relations as counsel for Mrs. Burgess, did you have an interview with said Dillingham; when was it; where was it? And state fully all that passed between you in relation to this matter.

Ans. I did have an interview with said Dillingham on the seventh day of July last. I dictated to my stenographer a letter addressed to William C. Dillingham, 209 Washington street, room 13, requesting him to call on me when in town on the next day; a letter-press copy of this letter is in my copy book for the month of July, page 777. He came to my office on the following day, the 8th of July last, and I had quite a long talk with him at my office in relation to this matter. I asked him if he was the William C. Dillingham, deputy sheriff, who acted as deputy sheriff in the service of the execution of Peter Graffam against Christine J. Burgess, and Edward B. Newhall against Christine J. Burgess. He said he was. I asked him who was present at the sale, and where it took place. He said it took place at his office, in Malden; that Mr. Samuel M. Fairfield and Peter Graffam were present; and I have an impression that Mr. Newhall was present, but I can't state with any degree of certainty as to that. I asked him if he made any other service of the executions in either case except what was shown on his returns. He said he did not; that he wasn't aware that the law required him to do so. I asked him if he didn't consider it his duty, in selling the whole of a piece of property for so small a debt, to make some inquiry as to whether the defendant had an agent, tenant, or attorney in the Commonwealth; to which he replied, that he did make inquiry. I asked him whom he made inquiry of. He said he took his instructions from the plaintiff's attorney in each
130 case. I asked him if he was aware of the fact that Mrs. Burgess had a tenant in possession of the premises on the day when he levied the execution and during the period the property was advertised; to which he replied he did not. I then asked him why it was that neither of the executions which were placed in his hands in April and May, 1879, were not returned into court until July 3, 1880; to which he replied, with some spirit, he didn't propose to be questioned by me; that he followed the instruction of plaintiff's counsel. Upon that he walked briskly out of the office. This is the substance of my conversation with Mr. Dillingham. In the accounts of both conversations with Fairfield and Dillingham I am not prepared to say I have followed the exact order of conversation. I think I have in substance.

Cross-examination by I. R. CLARK, Esq., of counsel for defendant:

Cross-int. 8. How do you fix the date of the interview with Fairfield?

Ans. I fix the date by reference to the charges which I made to my client for services on that occasion.

Cross-int. 9. Do you fix it by any other memorandum?

Ans. I do.

Cross-int. 10. Memorandum in what?

Ans. That on the day following, which was the 9th, after receiving the information that Graffam was trying to sell the property, I started to draw the bill of complaint; worked nearly all that night, and filed my bill on July 10.

Cross-int. 11. Was any one present during any portion of the Fairfield interview besides yourself and Mr. Fairfield?

Ans. No one that I saw. If there was any person present he must have been concealed.

Cross-int. 12. Was any one present at the Dillingham interview besides yourself and him?

Ans. When our interview commenced Mr. Dillingham came into this room, where there were several persons engaged with me in conversation. I invited him into Mr. Upham's room, and during our conversation in Mr. Upham's room Mr. Upham came in; we then left and went into the outer office near the outside door, and remained standing during the rest of the conversation. I do not know whether any person heard our conversation. I have not inquired.

131

Cross-int. 13. Was there any memorandum in writing of what took place at either the Fairfield or the Dillingham interviews ever made by you, or by any person for you, to your knowledge?

Ans. There was. Immediately on my return to my own office from Mr. Fairfield's office I repeated the entire conversation to Mr. and Mrs. Burgess, who were sitting here waiting my return, and I caused my statement of that conversation to be taken in short-hand, and such parts of it as I deemed material were subsequently drafted and embodied in complainant's bill. The conversation with Mr. Dillingham was taken on the following day, the 9th, and reduced to writing by my short-hand writer at the time I was making a rough draft of the bill. These were the only memoranda which were made of either of those conversations.

EDWARD P. BROWN.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Adjourned to Dec. 28, 10 a. m.

DECEMBER 28.

Adjourned to Dec. 30, 10 a. m.

Deposition of Alice S. Graffam.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Dec.* 30, 1880.

Int. 1. What is your name, age, and residence?

Ans. Alice S. Graffam; age, twenty-nine; Malden, Mass.

Int. 2. Are you the wife of Peter Graffam, of Malden?

Ans. Yes, sir.

Int. 3. Do you know Samuel M. Fairfield?

Ans. Yes, sir.

Int. 4. Are you familiar with his handwriting?

Ans. No, sir; I am not.

132 Int. 5. Did you ever acknowledge a deed before him during the month of July last?

Ans. I signed a deed.

Int. 6. When was it that you signed a deed?

Ans. I don't know when it was.

Int. 7. Please examine Complainant's Exhibit No. 4, and tell me whether your signature is upon the second page of that deed.

Ans. Yes; that is my writing.

Int. 8. When did you write your name there, giving the date, and where you were at the time?

Ans. I don't remember what date it was, but I was at Mr. Fairfield's house, in Malden.

Int. 9. Who was present when you signed that deed at Mr. Fairfield's house, in Malden?

Ans. Mr. Fairfield and my husband.

Int. 10. Anybody else?

Ans. No, sir.

Int. 11. Did your husband sign that deed at the same time, and is the signature "Peter Graffam," directly over yours in that deed, his signature?

Ans. He did sign it at the same time, and the signature is his.

Int. 12. Have you any memoranda that will enable you to fix the date when it was that you and your husband signed that deed?

Ans. I don't know about that.

Int. 13. Is that the only deed which you signed in the presence of Mr. Fairfield during the month of July last?

Ans. Yes, sir.

Int. 14. Did you examine that deed carefully at the time you signed it, either before or after?

Ans. No, sir.

Int. 15. Was the name of Herbert F. Doble, to your knowledge, written in that deed at the time when you signed it; and, if yea, how came it written in that deed in a different ink from that in which your signature is written?

Ans. I don't know whether his name was written then or not.

Int. 16. Did you see it in the deed at the time you signed your name to it?

133 Ans. I don't know.

Int. 17. Do you remember to have seen it in the deed when you signed it?

Ans. I didn't look at the deed at all; I just wrote my name; that is all.

Int. 18. Who asked you to write your name to that deed?

Ans. My husband.

Int. 19. What did he tell you you were to do it for?

Ans. I don't know.

Int. 20 Didn't he tell you the reason why he wanted you to sign the deed?

Ans. I signed it for him, as he wanted me to; he didn't tell me what for.

Int. 21. You had some conversation with him, did you not, in regard to his trouble with Mrs. Burgess before you signed that deed?

Ans. Not a great deal.

Cross-examination waived.

ALICE S. GRAFFAM.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of James F. Babcock.

BOSTON, *Dec.* 30, 1880.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

Int. 1. What is your name, age, residence, and profession?

Ans. James F. Babcock; reside in Boston; am thirty-seven years of age; my profession, a chemist.

Int. 2. Have you been accustomed to examine chemically different inks used in writing?

Ans. I have.

Int. 3. Referring to Complainant's Exhibit No. 4, deed of Peter Graffam to Herbert F. Doble; Complainant's Exhibit No. 5, memoranda receipt dated July 12; Complainant's Exhibit No. 6, check of E. H. Doble & Co.; please state whether you have examined these several handwritings, the ink on each of them, and also how many kinds of ink, and what mutilations or erasures you find.

134

Ans. I have examined them. Commencing with the deed, on the first page, the three lines at the beginning, and the description of the property (excepting the last two lines thereof), and word "his" in the last line, are in the same kind of ink. On the same page the words "Herbert F. Doble, of Quincy, county of Norfolk, and Commonwealth aforesaid," on the fourth and fifth lines of writing, also the name "Herbert F. Doble" at the beginning of the sixth line of writing, also the last two lines of the description of the property, and the name "Herbert F. Doble" on the next to the last line, are in the same ink but different from the other. The first sort of ink is an iron ink, the second is a logwood ink. The name "Herbert F. Doble" in the fourth line has been partly written and partly made up from certain parts of letters which form another name originally written upon the paper; the capital "H" of "Herbert" has been formed from, and still contains parts of the letter N. The letter "e" of "Herbert" is as originally written. The "r" is in part the lower part of the "l," the upper part of which (the "l") has been erased, and the lower part written over. The letter "s"

is still to be seen under the letter "b" of "Herbert." The capital "F" was originally part of a capital L, which has been erased on the lower right-hand side, and the "L" changed to an "F." The letter "D" has been formed from a capital "G," the whole of which (the "G") still remains upon the paper, and the letter itself still shows some pencil tracings which may have been made for the purpose of sketching out the plan of making a "D" from a "G." I do not mean to be understood that such tracings were made for this purpose, but I do say that the latter "D" has been altered from a "G," in a manner which shows some attempt at concealment, and the letters at the same time show pencil tracings. The "o" of "Doble" has been written over what was formerly the letter "a." The letters "b" and "l" of "Doble" have been formed by writing over portions of what were originally two f's, the lower parts of the f's having been erased. The "e" of "Doble" has been formed in part from an "a," and following this "e" are still visible tracings of the erasure of a small "n."

135 Int. 4. Have you examined this page with a microscope?

Ans. I have examined it sufficiently magnified for the purpose of the examination.

Int. 5. Referring to the fifth line, commencing at the printed words "paid by," please state, if you can, what name was originally written where the name "Herbert F. Doble" now appears; and, if yea, what was it?

Ans. I have no doubt the name was Nelson L. Graffam.

Int. 6. From the examination which you have made by the use of chemicals and the use of the magnifying glass, are you able to tell whether the ink used in writing the word "Doble" was used before or after the application of the ink in writing the word "thousand" on the line above?

Ans. There is only one single point where they intersect. In my judgment the word "Doble" was written after the "five thousand."

Int. 7. With reference to the examination which you made, are you able to say whether the word "Doble" was written after the ink in the word "thousand" had become dry?

Ans. In my opinion, the ink in the "thousand" was dry before the word "Doble" was written.

Int. 8. Please state fully what you observed on examination in the writing on the second page of Complainant's Exhibit No. 4.

Ans. The words "Alice S." in the tenth line are in a logwood ink similar to that ink on the first page. The rest of the deed proper is in the same kind of ink as the body of the deed. The ink of the signatures on the end are in the same general kind of ink—that is, they are iron inks, and not logwood inks—and there is nothing to show positively whether they are or are not identical with the body of the deed. I think the acknowledgment of the deed is in the same ink as the body of the deed, at least a portion of it, the words "Peter and Alice S. Graffam."

Int. 9. Referring now to Complainant's Exhibits No. 5 and No. 6,

please state what ink you find upon these exhibits, if any, which corresponds with the ink you find upon the deed.

Ans. The inks upon Exhibits No. 5 and No. 6 are of the same kind—that is, a logwood ink—and similar to the logwood ink
136 upon the deed. The ink upon the check was written perhaps with a fuller pen and not blotted, so that it looks considerably darker than the ink on Exhibit 5, but it is easily shown to be precisely like the other. There is also an ink stain or blot on the back of the check in the same kind of ink as that of the receipts or of the logwood ink on the deed. The indorsement on the check, "Peter Graffam," and the initials "M. L. H. & Co.," are in similar inks and different from any of the others.

Cross-examination waived.

JAS. F. BABCOCK.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of George C. Stantial.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Dec.* 30, 1880.

Int. 1. What is your name, age, residence, and occupation?

Ans. George C. Stantial; age, fifty; residence, Melrose, Mass.; occupation, ink manufacturer.

Int. 2. Please state whether or not you were one of the assessors of the town of Melrose in the year 1879; and, if yea, whether, as an assessor for said town, you examined the property then standing in the name of Christine J. Burgess, on the corner or at the junction of Emerson and Myrtle streets, in said town of Melrose.

Ans. We have the property assessed to Mrs. Horace C. Burgess, Providence, R. I. I was one of the assessors at that time. I presume we examined it. I have no particular recollection.

Int. 3. Have you with you the record of the valuation of this property for the year 1879?

Ans. I have.

Int. 4. Please refer to your book, and state what was the assessed valuation of this property on the 1st of May, 1879, and the name of the person to whom it was assessed.

(Objected to, as irrelevant, immaterial, and incompetent.)

Ans. Five thousand seven hundred dollars. Mrs. Horace C. Burgess. I have "Providence, R. I.," against her name.

137 Int. 5. Was that valuation placed upon that property at that time placed upon it by the board of assessors of the town of Melrose, and was it estimated to be its full cash value when made?

(Same objection.)

Ans. The fair cash value, I should say. It was placed upon it by the board of assessors.

Int. 6. Referring to your book, please state what this valuation included.

(Same objection.)

Ans. House and land; we have the land recorded at 20,000 feet.

Cross examination waived.

GEORGE C. STANTIAL.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of William N. Tyler.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *May* 23, 1881.

Int. 1. State your name, age, residence, and occupation.

Ans. Wm. N. Tyler; age, forty-five; residence, Wakefield, Mass.; occupation, clerk of first district court of Eastern Middlesex.

Int. 2. How long have you been clerk of the first district court of Eastern Middlesex?

Ans. Since July, 1876.

Int. 3. Have you in your possession the records of the first district court of Eastern Middlesex?

Ans. I have.

Int. 4. Please examine the same and state whether you have record of a suit of Peter Graffam *v.* Christine J. Burgess.

Ans. I have.

Int. 5. Please give date of issuing of first execution in that case; and state whether you recognize Mrs. Burgess, the present complainant, as defendant in that suit.

138 Ans. March 21, 1879. The lady now sitting next to you was defendant in that suit.

Int. 6. When was that execution returned into your court, if at all?

Ans. July 3, 1880.

Int. 7. Have you that execution in your possession now?

Ans. I have.

Int. 8. Please examine what purports to be a copy of execution of Peter Graffam against Christine J. Burgess, together with the officer's return thereon, which are found on pages 26, 27, 28, and 29 of the printed record in this case, and state if that is substantially a copy of the original execution in your possession belonging to said cause.

Ans. I have examined the same, and it is a correct transcript.

Int. 9. Please state whether you have in your possession an execution of Edward B. Newhall against said Christine J. Burgess, following a suit that was pending in your court.

Ans. I have two.

Int. 10. Please give date of issuing of first execution, also date when same was returned.

(Objected to, as incompetent, irrelevant, and immaterial.)

Ans. First execution was issued March 21, 1879, and returned May 31, 1879.

Int. 11. Please produce certified copy of execution referred to in your last answer, with the officer's return on the same.

(Same objection.)

(Certified copy of said execution herewith produced by witness, and marked "Exhibit Tyler No. 1, A. B. C., Sp'l Ex'r.")

Int. 12. Please state when the alias execution was issued in the same case of Edward B. Newhall *v.* Christine J. Burgess.

Ans. May 31, 1879; the same day the first execution was returned.

Int. 13. Please state when the alias execution with the officer's return thereon was returned into your court.

Ans. July 3, 1880.

Int. 14. Please examine copy of execution in case of Edward B. Newhall *v.* Christine J. Burgess, found upon pages 38 and 39 of record in this case, and tell me whether the same is correct.

Ans. I have examined the same, and the same is correct.

Int. 15. Please produce a certified copy of the officer's return in the alias execution referred to in your last answer.

(Copy of officer's return is herewith produced, and marked "Exhibit Tyler No. 2, A. B. C., Sp'l Ex'r.")

Cross-examination by I. R. CLARK, Esq., of counsel for defendants:

Cross-int. 16. In your answer to Int. 5, you state positively that Mrs. Burgess, the complainant in this bill of complaint, was the defendant in the two suits referred to in your direct examination; how are you able to speak so positively?

Ans. From the fact that she was defendant in one or more suits previous to this time, and I recollected her as soon as I saw her. I also recollected the name.

Cross-int. 17. Then she saw you in regard to these suits while they were pending in your court, did she not?

Ans. I think she did.

Cross-int. 18. At what place did she see you?

Ans. At the court-room.

Cross-int. 19. Was it before or after the issuing the order of notice, so called, in these suits?

Ans. If at all, it was after.

Cross-int. 20. And before the judgment was entered?

(Objected to, as immaterial and irrelevant.)

Ans. I would like to make a suggestion. Mrs. Burgess came to

the court-room one day and had some conversation, and I am not certain what that conversation was in detail, neither can I give the date, but it was in reference to work done in her house in Melrose about some walls and drain pipe, and whether in connection with this suit or not I couldn't say. I couldn't say by whom the work was done.

Cross-int. 21. Can you fix approximately the time of this interview?

(Same objection.)

140 Ans. I cannot. It was one day after the court had adjourned, and I was sitting there alone writing.

Cross-int. 22. But was it not previous to the entry of the judgment in these cases?

(Same objection.)

Ans. I couldn't say. I knew there was no appearance before the order of notice was issued.

Cross-int. 23. Did she not have some conversation with you in regard to the counsel who were to appear for her in this case at that time?

(Same objection.)

Ans. I couldn't say. I recollected Mr. Bryant appeared for her in a previous case.

Cross-int. 24. Didn't she also ask you how they expected a woman living in Providence could get the order of notice?

(Same objection.)

Ans. She said something about living in Providence or Rhode Island, and asked how they expected she was going to get notice.

Cross-int. 25. Taking the fact she then asked you how they expected she was to get the notice, and the fact that counsel appeared for her afterward in this suit, does that enable you to fix this conversation as to time, whether before or after the judgment?

(Same objection.)

Ans. No, sir; I can't fix it. The only thing I recollect is that Mrs. Burgess came in and had this conversation.

Cross-int. 26. Did she say anything about how she was going to defend the suit when she told you it was such a bill?

(Same objection.)

Ans. I don't recollect she did.

Cross-int. 27. How far back does your docket go?

Ans. Oct. 31, 1877.

Cross-int. 28. Will you kindly look through your docket and see if there are any suits entered in your court against this complainant, Mrs. Burgess, except the two before referred to in your direct examination?

(Same objection.)

Ans. I find nothing in this docket.

141 Cross-int. 29. Did this conversation that you speak of occur since Oct. 31, 1877?

Ans. I think there is no doubt about it, as it leaves a very recent impression in my mind.

Cross-int. 30. Please examine your docket, and state whether any suits have been entered in your court against the complainant in this suit since the entry of the two suits spoken of in your direct examination.

Ans. There are not any.

Cross-int. 31. Now, are you quite sure that Mrs. Burgess, the complainant, was the defendant in those two suits referred to in your direct examination?

Ans. I am sure as I can be.

Cross-int. 32. Why?

Ans. Because she was there at another time in one or more suits; and I know from the conversation she had with me that these suits related to her estate in Melrose.

Cross-int. 33. This interview you refer to by which you identify her had nothing to do with any suits other than the Graffam and Newhall suits?

Ans. I couldn't say.

Cross-int. 34. What was the purpose she expressed for which she came there to see you?

Ans. I couldn't say that. She was complaining about the manner in which the work had been done.

Cross-int. 35. The work for which the suit was brought?

Ans. I so understood it.

Cross-int. 36. Did you identify her because her complaint referred to these two suits?

Ans. Whatever the suit was, she asked some questions in relation to the suit, and then went on telling about the manner in which the work was done.

Cross-int. 37. Will you now swear that she saw you in regard to these two suits in question?

Ans. So far as my recollection goes, I have no doubt about it.

142 Direct examination resumed (*de bene*):

Int. 38. How long have you been clerk of the district court referred to?

Ans. Since July, 1876.

Int. 39. This docket which you have produced is the second docket?

Ans. Yes, sir.

Int. 40. Do you recollect in 1876 Mrs. Burgess was sued in your court by a man by the name of Dowd, a plumber?

Ans. I recollect she was sued by a plumber; I don't know his name; I think he was from Charlestown.

Int. 41. Do you recollect Mrs. Burgess called on you once or twice in connection with that suit of the plumber?

Ans. I recollect she called in relation to it, but not the number of times; once, twice, or three times.

Int. 42. Are you prepared to say that the conversation you had which you say was in relation to the drain pipe was not in connection with the suit of the plumber?

Ans. It is possible the two conversations might run together. I could say about that, that conversation in relation to plumbing is very distinct at present.

Cross-examination resumed:

Cross-int. 43. Do you mean to say she talked about the plumber suit and the Newhall and Graffam suit at the same time?

(Objected to, as witness has not stated he had any conversation with her in reference to the Newhall and Graffam suits.)

Ans. It does not seem so to me.

Cross-int. 44. But there were two conversations?

Ans. Yes, two or more.

Cross-int. 45. And some in regard to the Newhall and Graffam suits and some in regard to the plumber suit?

Ans. Yes, sir; the Graffam suit was the one I had in mind. I don't recollect there was anything said about the Newhall suit.

WM. N. TYLER.

Attest: ARTHUR B. CLAPP,
Special Examiner.

143 *Deposition of William C. Dillingham.*

BOSTON, *May* 23, 1881.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

Int. 1. State your name, age, residence, and occupation.

Ans. William C. Dillingham; age, thirty-three; residence, Everett; occupation, deputy sheriff for county of Middlesex.

Int. 2. You are one of the respondents in this suit, and the person who served the executions in the suits of Newhall *v.* Burgess, and Graffam *v.* Burgess, in the year 1879, which issued out of the first district court of Eastern Middlesex, are you not?

Ans. I am.

Int. 3. Referring to the execution of Edward B. Newhall *v.* Christine J. Burgess, dated March 31, 1879, a copy of which is annexed to the deposition of Wm. N. Tyler, and marked "Exhibit Tyler No. 1," please state by whose authority you made the return that is found thereon, dated May 20, 1879.

Ans. By direction of S. M. Fairfield, the attorney, I presume.

Int. 4. At the time when you made that return did you not know that Mrs. Burgess had real estate in the town of Melrose?

Ans. I knew that she had real estate there which I seized on a former execution, but knew of no other.

Int. 5. Is the return on the execution referred to in your handwriting, signature and all?

Ans. Yes, sir.

Int. 6. When you made that return on that execution did you deliver it to Mr. Fairfield at once?

Ans. I think not.

Int. 7. What did you do with it?

Ans. I think I returned it to court.

Int. 8. Did you order an alias?

Ans. I think not; but it is possible I may have done so.

Int. 9. Please examine the alias execution in the same case, and state whether that execution continued in your hands from the day you received it up to July 3, 1880.

144 Ans. It continued in my hands from the day I received it until the time it was returned to court, but I don't know whether that was July 3, 1880, or not.

Int. 10. Did you yourself return that execution to court?

Ans. I may have returned it myself, or may have sent it by my father; I don't know which.

Int. 11. Please refer to the alias execution in the case of Newhall *v.* Burgess, and tell me whether the return on that execution is in your handwriting.

Ans. It is.

Int. 12. Where did the sale take place which is described in that return?

Ans. I made the sale as set forth in the return on the execution to which I refer you.

Int. 13. Will you answer the question, in what place? Where did the sale take place referred to in that execution?

Ans. I will, if so directed by the court. It took place at my office, in Hill's Building, in Malden.

Int. 14. Give the name of each and every person who was present at that call.

(Objected to, as incompetent, irrelevant, and immaterial.)

Ans. I cannot do so, as I do not recollect.

Int. 15. Give the names of all persons whom you do recollect to have been there.

(Same objection.)

Ans. I do not recall positively, but I think Mr. Fairfield, Mr. Graffam (I think Peter Graffam, the plaintiff), possibly Mr. Newhall, Mr. Henry C. Gray, I think. I think two or three others, but I don't know who they were.

Int. 16. Is your office on the first or on the second floor of the building?

Ans. Up one flight, on the second floor.

Int. 17. Did you exhibit a red flag on that occasion to indicate that an auction sale was going on or about to take place, or a flag of any color?

(Same objection.)

Ans. I think not; I never do in sales of this kind.

145 Int. 18. Who is Mr. H. C. Gray?

(Same objection.)

Ans. Proprietor of the Malden Mirror.

Int. 19. For what purpose was he present?

(Same objection.)

Ans. None that I know of.

Int. 20. Referring to the execution in case of Peter Graffam *v.* Christine J. Burgess, please state whether the sale shown by the officer's return was attended by any other person than those who attended the sale already testified by you; and, if so, by whom.

(Same objection.)

Ans. I do not recollect; there may have been many others present.

Int. 21. Can you name a single person who was present at that sale except Peter Graffam, Samuel M. Fairfield, and yourself?

(Same objection.)

Ans. I cannot; there may have been many others present. I would have no knowledge of their names.

Int. 22. Did you, on the occasion of the sale on the Graffam execution, have out any flag or other indication to the public that an auction sale was going on in your office?

(Same objection.)

Ans. I had no flag out; it is not customary in sales of this kind.

Int. 23. Who requested you to hold the two executions required about in this deposition until July 3, 1880?

(Same objection.)

Ans. No one.

Int. 24. Did you have any conversation with the clerk of the court from which the executions issued, or the judge of that court, as to your right to hold the executions after sixty days from the date thereof?

(Same objection.)

Ans. I did not. I do so in, I may say, every instance in sales of this kind.

WM. C. DILLINGHAM.

Attest: ARTHUR B. CLAPP,
Special Examiner.

146 COMPLAINANT'S EXHIBIT NO. 2.

Lease.

Christine J. Burgess to J. N. Faulkner.

This indenture of lease, made and executed this twentieth day of December, A. D. one thousand eight hundred and seventy-eight, by

and between Christine J. Burgess, of Providence, R. I., of the one part, and J. N. Faulkner, of Boston, Mass., of the other part, witnesseth: That the said lessor, for the consideration hereinafter mentioned, has demised, granted, and to farm let, and does hereby demise, grant, and to farm let, unto the said lessee, his executors, administrators, and assigns, the estate situated on the corner of Emerson and Myrtle streets, in the town of Melrose, Massachusetts, said estate comprising the two-story dwelling-house and all the land therewith connected, together with the furniture in said house; to have and to hold said premises from the twentieth day of December, A. D. 1878, to the first day of June, A. D. 1879.

And the said lessee, for himself and for his executors, administrators, and assigns, does covenant and agree to pay, or cause to be paid, to said lessor, her successors or assigns, the sum of thirty-seven and one-half dollars per month, and every month during said term, for rent and hire of the above-named premises, in payments of $37.50 each on the twentieth day of each month, successively, to the end of the term; and in case of failure on his part to pay any rent within — days subsequent to the time as above specified, or in case of failure to conform to all the conditions of this lease, the said lessor shall be at liberty to declare this lease at an end and terminated, and thereupon to take immediate possession of the premises; in which case the said lessee shall be considered as tenant holding over — term.

And the said lessee does further covenant and agree that he will use and improve said premises in a becoming and proper manner, not committing any waste or injury on the same. And the said lessee does further agree to keep the interior of the premises
147 in good repair, including the setting of glass in the windows and doors, during the continuance of this lease; and at the expiration of this lease to quietly and peaceably surrender up the possession of the premises to the said lessor, or her assigns, in as good order as they now are, common and ordinary wear, inevitable casualties, and damages by the elements excepted.

And the parties hereto further covenant and agree that in case said premises shall be damaged by fire so as to be rendered untenantable, a just abatement of said rent shall be made until the same shall be repaired by the lessor.

And the said lessee does also covenant and agree not to lease or underlet, nor permit any other person or persons to occupy or improve or make, or suffer to be made, any alterations in the premises hereby leased without the written consent of said lessor having been first obtained; and that the said lessor may enter to view and make improvements in said premises as may be necessary or expedient.

And the said lessor agrees to keep the exterior of the premises in good repair.

And the said lessor, on the conditions and terms above mentioned, does hereby agree that the said lessee may use, possess, occupy, and enjoy said premises for the full term commencing and terminating at the dates aforesaid.

In testimony whereof, the parties have hereunto interchangeably set their hands and seals this twentieth day of December, A. D. 1878.

J. N. FAULKNER. [SEAL.]
CHRISTINE J. BURGESS. [SEAL.]

Signed, sealed, and delivered in presence of—

——— ———.

148 COMPLAINANT'S EXHIBIT No. 4.

Quit-Claim Deed.

Peter Graffam to Herbert F. Doble.

Know all men by these presents that I, Peter Graffam, of Malden, county of Middlesex and Commonwealth of Massachusetts, in consideration of five thousand dollars paid by Herbert F. Doble, of Quincy, county of Norfolk and Commonwealth aforesaid, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quit claim unto the said Herbert F. Doble all my right, title, and interest in a certain piece or parcel of land, with the buildings thereon, situated in Melrose, in said Middlesex county, and bounded and described as follows, viz: Beginning at the junction of Emerson and Myrtle streets, thence south 76° east one hundred and twelve feet on said Emerson street; thence south 190° west one hundred and seventy feet on land now or formerly of John Shelton; thence north 76° west one hundred and twenty-one feet and eight inches to said Myrtle street; thence northerly by said Myrtle street one hundred and seventy-six feet to the point of beginning, containing about nineteen thousand eight hundred and fifty square feet, more or less; being the same property conveyed to me by William C. Dillingham, by deed dated May 17, A. D. 1879, and recorded with Middlesex registry of deeds, lib. 1,512, fol. 319.

To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said Herbert F. Doble, and his heirs and assigns, to their own use and behoof forever.

And I do hereby, for me and my heirs, executors, and administrators, covenant with the said grantee and his heirs and assigns that the granted premises are free from all incumbrances made or suffered by me; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through, or under me, but against none other.

And for the consideration aforesaid, I, Alice S. Graffam, wife of Peter Graffam, do hereby release unto the said grantee and his
149 heirs and assigns all right of or to both dower and homestead in the granted premises.

In witness whereof, we, the said Peter Graffam and Alice S. Graffam,

have hereunto set our hands and seals, this sixth day of July, in the year one thousand eight hundred and eighty.

PETER GRAFFAM. [SEAL.]
ALICE S. GRAFFAM. [SEAL.]

Signed, sealed, and delivered in presence of—
S. M. FAIRFIELD,
Witness to both.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

JULY 7, 1880.

Then personally appeared the above-named Peter and Alice S. Graffam, and acknowledged the foregoing instrument to be their free act and deed.

Before me— SAM. F. FAIRFIELD,
Justice of the Peace.

CAMBRIDGE, *July* 14, 1880—12h. 50m. p. m.

Received and entered with Middlesex so. dist. deeds, lib-ro 1,546, folio 65.

Attest: CHAS. B. STEVENS, *Register.*

COMPLAINANT'S EXHIBIT No. 5.

BOSTON, *July* 12, 1880.

Rec'd of Nelson L. Graffam $50, in part payment of the purchase-money of my estate in Melrose, to bind the bargain for said property until 12 m. on Tuesday, July 13, 1880.

PETER GRAFFAM.

150 COMPLAINANT'S EXHIBIT No. 6.

Received on deposit. $1,050.

QUINCY, MASS., *July* 13, 1880.

U. S. int. rev. two cents. National Mount Wollaston Bank,
Pay to Peter Graffam, or order, ten hundred and fifty dollars.

E. H. DOBLE & CO.

Boston Banks. Bank hours,
8 to 10½ a. m., 3 to 5 p. m.

EXHIBIT TYLER NO. 1.

Execution.

[L. S.] COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } *ss:*

First district court of Eastern Middlesex to the sheriffs of our several counties, or their deputies, the constables of any city or town within our said counties, or any or either of them, Greeting:

Whereas Edward B. Newhall, of Malden, in the county of Middlesex, the judgment creditor by the consideration of the justice of our first district court of Eastern Middlesex, holden at Malden, within and for our county of Middlesex, aforesaid, on the tenth day of March, A. D. 1879, recovered judgment against Christina J. Burgess, of Providence, in the county of Providence and State of Rhode Island, the judgment debtor, for the sum of thirty-three dollars and forty-one cents debt or damage, and fifteen dollars and fifty-five cents costs of suit, as to us appears of record, whereof execution remains to be done:

We command you, therefore, that of the goods and chattels and lands of the said judgment debtor within your precinct you cause to be paid and satisfied unto the said judgment creditor the
151 aforesaid sums, being forty-eight dollars and ninety-six cents in the whole, together with interest thereon from said day of the rendition of said judgment, with twenty-five cents more for this execution writ, together with your own fees.

Hereof fail not, and make return of this writ, with your doings therein, unto our said court in sixty days from the date of this writ.

Witness John W. Pettengill, Esq., at Malden, the twenty-first day of March, in the year of our Lord one thousand eight hundred and seventy-nine.

WILLIAM N. TYLER, *Clerk.*

A true copy.
Attest: WILLIAM N. TYLER,
Clerk of the First District Court of Eastern Middlesex.

MIDDLESEX, *ss:*

MAY 20, 1879.

By virtue of this execution I have made diligent search for goods, chattels, and lands belonging to the within-named Christina J. Burgess, and cannot find any within my precinct. I therefore return this execution to court in no part satisfied.

W. C. DILLINGHAM,
Deputy Sheriff.

A true copy of officer's return.
Attest: WILLIAM N. TYLER,
Clerk of the First District Court of Eastern Middlesex.

(Indorsement.)

No. 1621. 1879.

J. B. Newhall, Plaintiff. C. J. Burgess, Defendant.

Exon.	25
Dam.	$33 41
Costs	15 55

Filed May 31, 1879.

S. M. FAIRFIELD,
Plaintiff's Attorney.

A true copy of indorsement.

WM. H. TYLER,
Clerk of the First District Court of Eastern Middlesex.

152 EXHIBIT TYLER No. 2.

Officer's Return.

MIDDLESEX, *ss:*

JUNE 3, 1879.

This execution has been placed in my hands for the purpose of taking the lands of Christina J. Burgess, the within-named judgment debtor.

WM. C. DILLINGHAM,
Deputy Sheriff.

MIDDLESEX, *ss:*

JUNE 3, 1879.

By virtue of this execution I this day seized and took all the right that Christina J. Burgess, within named, had liable to be taken on execution, on this third day of June, 1879, to redeem from a former sale on execution made by me on the seventeenth day of May, 1879, the following described real estate, to wit, a certain piece or parcel of land, with the buildings thereon, situated in Melrose, in said county of Middlesex, and bounded and described as follows, viz: Beginning at the junction of Emerson and Myrtle streets, and thence running south 76° east one hundred and twelve feet on said Emerson street; thence south 19° west one hundred and seventy feet on land now or formerly of John Shelton; thence north 76° west one hundred and twenty-one feet and eight inches to said Myrtle street; thence northerly by said Myrtle street one hundred and seventy feet to the point of beginning, containing about 19,850 square feet, more or less; and I have deposited in the registry of deeds for the southern district of Middlesex county an attested copy of this execution, with a memorandum on the same stating that said execution has been placed in my hands for the purpose of taking the lands of Christina J. Burgess, the within-named judgment debtor. And on the sixteenth day of said June I caused notification of the time and place of the proposed sale of said Christina J. Burgess' right to redeem from said former sale to be posted up in one public place in said Melrose, and also in each of the towns of Wakefield and Malden, being two towns adjoining said Melrose,

all of which notices were posted thirty days at least before
153 the time appointed for said sale. I also caused an advertisement of the time and place of sale to be published three weeks successively before the sale in the "Malden Mirror," a public newspaper printed in said county of Middlesex. I have also made diligent search for the said Christina J. Burgess and cannot find her within my precinct. I was therefore unable to give her notice of the time and place of sale. In pursuance of said notices and advertisements, on the ninth day of August, 1879, at nine o'clock a. m., at my office in Hill's Building, so called, on Main street, in Malden, in said county, being the time and place previously appointed for said sale, deeming it expedient and for the interest of all persons concerned therein to postpone said sale for want of purchasers, I adjourned the same, giving notice thereof by public proclamation then and there made, to the thirteenth day of said August, at nine o'clock a. m., at my office aforesaid, at which time and place I made sale of said Christina J. Burgess' right to redeem the above-described premises from said former sale on execution, by public auction, to Edward B. Newhall, of Malden, in said county, he being the highest bidder therefor, which brought the sum of eighty-one and $\frac{21}{100}$ dollars. And I have made, executed, acknowledged, and delivered to said Edward B. Newhall under my hand and seal as deputy sheriff a good and sufficient deed of said Christina J. Burgess' right to redeem from said former sale, and I have deducted from the said sum of $81.21 the amount of my fees and charges for the levy of this execution, being $20.53, and the balance, being fifty and $\frac{68}{100}$ dollars, I have applied in full satisfaction of this execution, as appears by the receipt of the attorney for the within-named judgment creditor, which is indorsed thereon. And so I return this execution satisfied.

WM. C. DILLINGHAM,
Deputy Sheriff.

First District Court of Eastern Middlesex.

COMMONWEALTH OF MASSACHUSETTS, *Middlesex*, } ss:

I, William N. Tyler, clerk of the first district court of Eastern Middlesex, hereby certify that the foregoing is a true copy of the officer's return on an execution in said court, on the thirty-
154 first day of May, A. D. 1879, in which one Edward B. Newhall appears as plaintiff and Christine J. Burgess appears as defendant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this twenty-seventh day of May, A. D. 1881.

[SEAL.] WILLIAM N. TYLER,
Clerk of the First District Court of Eastern Middlesex.

Evidence for Defendants, taken pursuant to the Sixty-seventh Rule of the Supreme Court of the United States, in Equity, as Amended, before me, Horace G. Allen, Special Examiner.

BOSTON, *Aug.* 9, 1881.

Present: E. P. Brown, Esq., of counsel for complainant; A. A. Ranney, Esq., and N. L. Graffam, Esq., of counsel for defendants.

Deposition of Alonzo V. Lynde.

Direct examination by A. A. RANNEY, Esq., of counsel for defendants:

Int. 1. State your name, age, residence, and occupation.

(Mr. Brown, of counsel for complainant, enters an objection to this witness testifying at all, on the ground that he has been counsel for complainant in this matter, and has consulted and advised with complainant in this matter, as shown by his receipt in writing.)

Ans. Alonzo V. Lynde; fifty-seven years; Melrose; counsellor-at-law.

Int. 2. Do you know the complainant, Christina J. Burgess; if so, how long have you known her, and in what connection or relation?

Ans. I do know her, and have for fifteen or more years. Have been counsel for her in suits and proceedings in the courts of Massachusetts.

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Int. 3. Will you state whether you were counsel for her or acted for her as counsel in the case of Peter Graffam against said Burgess, brought in the first district court of Eastern Middlesex?

Ans. I cannot say I was.

(Mr. Fairfield here stated to the witness that he, witness, was present.)

Int. 4. Did you act in that case at all, or in relation to it, for Mrs. Burgess?

Ans. I cannot say I did, as I now recollect.

Int. 5. Were you counsel for her, or acted as counsel for her, in that suit, after the judgment had been obtained?

Ans. I did.

Int. 6. State what you were employed to do.

(Objected to by Mr. Brown, as incompetent.)

Ans. After the levy of the execution I was consulted by her about what rights she had to the property, both real and personal. I made examination of the papers in the suit of Graffam against her—the levy on it; also the suit of one Newhall against her, and the proceedings under that; an examination of the records at Cambridge and Malden, and advised her what rights I thought she had, and what she had better do in the matter. This was in the months of June and July, 1880, I think. I saw Mr. Fairfield, who claimed to act as the attorney for Mr. Graffam, and, I think, Mr. Newhall, and had several interviews with him at his office, and also with Mr. N. L. Graffam, more or less.

Int. 7. Will you state whether you were or were not the attorney of record in either of those suits?

Ans. My best recollection is that I was not.

Int. 8. Did you ever, in behalf of Mrs. Burgess, do anything toward making a tender of money for the redemption of the real estate?

Ans. I never made any tender.

Int 9. Were you ever furnished by her with any money for the purpose of making a tender?

Ans. No.

156 Int. 10. Did you know of the levy on the real estate of Mrs. Burgess in the suit referred to, after it was made?

(Objected to by Mr. Brown as incompetent.)

Ans. Yes, I saw the record, or minutes of it.

Int. 11. How long after the levy had been made, if it was after?

(Same objection as above by Mr. Brown.)

Ans. It was after. My recollection is, from eight to fifteen months after levy.

Int. 12. Will you fix the time as near as you can?

Ans. My impression is that it was just about a year; whether just before or just after the levy expired, it is impossible for me to tell.

Int. 13. Through whom did you learn, or by whom were you informed of it; *i. e.*, of the levy having been made?

Ans. By Mrs. Burgess, and I think I heard of it from some one on the street, that the property had been sold or levied on. I heard of it both ways.

Int. 14. What do you mean by both ways?

Ans. Both from people on the street and by Mrs. Burgess.

Int. 15. State whether you knew or heard of the levy having been made within one year from the time it was made.

(Mr. Brown objects to question as incompetent.)

Ans. I heard of it; I can't say that I actually knew.

Int. 16. From whom did you hear of it; whether from Mrs. Burgess or not?

(Same objection as above by Mr. Brown.)

Ans. I cannot say that I heard of it from Mrs. Burgess, in the Graffam suit, within a year. In the Newhall suit, I think I did from her. The Newhall suit, I think, was later than the Graffam suit; that is, the levy was.

Int. 17. Will you say that you didn't hear of the levy in the Graffam suit within a year?

(Same objection as above by Mr. Brown.)

Ans. I will not.

Int. 18. Will you state whether you did or did not hear of the levy in the Graffam suit within a year after it was made?

(Same objection as above by Mr. Brown.)

157 Ans. I have no doubt I did.

Int. 19. From whom did you learn it?

(Same objection as above by Mr. Brown.)

Ans. It is impossible for me to tell further than I have stated. I talked with Mr. N. L. Graffam and Mr. Fairfield, but whether within the year in the Graffam suit or not I do not recollect.

Int. 20. Did you at any time keep books of account?

(Same objection by Mr. Brown.)

Ans. Yes, sir.

Int. 21. Will you please produce and refer to your books of account and refresh your memory? State when you were first employed in relation to said suits or the levy made thereon.

(Same objection by Mr. Brown.)

Ans. I have not my books here, but will produce them if required. I can give you the dates.

Int. 22. Will you give the dates now? But we would like to have you produce the books, if you are willing.

(Same objection by Mr. Brown.)

Ans. The dates are in June and July, 1880.

Int. 23. How early in June?

(Same objection by Mr. Brown.)

Ans. I think the first charge is June 26, or about that time.

Adjourned.

BOSTON, *Aug.* 15, 1881.

Int. 24. Will you please state whether you have produced your books?

(Same objection by Mr. Brown.)

Ans. I have them.

Int. 25. Will you now refer to them sufficiently to refresh your memory, and state when you were first employed in the matter of the suits mentioned and what those services were?

(Objected to by Mr. Brown as incompetent, and he also objects to any answer, as the entries to which his attention is called are not in his handwriting.)

Ans. April 3, 1879, about, and June, 1880, and July, 1880. The matter in April, 1879, was about the review of the Graffam suit, and
what her rights were in the matter—examination of law
158 about a writ of review, bond, etc. The matters in June and July, 1880, were in reference to the Graffam suit, Newhall suit, examination of the minutes of the judgment, execution, levy, and the title to the real estate in Melrose for several years, to see what the title of Mrs. Burgess was to the property; interview with the deputy sheriff who made the levy; several interviews with Mr. Fairfield, the attorney, as to what he claimed for his clients; interview

with Mr. Graffam, at Malden, the plaintiff in the action; interview with Mr. Fairfield to know on what terms the matter could be settled if the parties desired; examination of the law in regard to the letter and right. I think that covers it about as well as I can state it generally.

Int. 26. By whom were you employed at the time stated in April, 1879?

(Same objection by Mr. Brown.)

Ans. Consulted by Mrs. Burgess.

Int. 27. State whether you then learned of the condition of the suit, or what had been done on it or in it.

Ans. I learned or was informed that judgment had been obtained and that it was too late for an appeal; therefore the only remedy I could see was a review, if a review could be had, in the Graffam suit.

Int. 28. Did you take any steps toward getting a review?

(Same objection by Mr. Brown.)

Ans. I did not.

Int. 29. Why not?

(Same objection by Mr. Brown.)

Ans. I had no instructions to. I don't think I saw Mrs. Burgess for several months to speak with her about this matter, as I recollect.

Int. 30. Do you mean several months after that time in April?

(Same objection by Mr. Brown.)

Ans. I do.

Int. 31. Did you inform her in April, 1879, or several months after, when you saw her, what her remedy was, if any?

(Same objection by Mr. Brown.)

Ans. I think I told her in April that it was a review, if anything.

Int. 32. Did she pay you for your services; if so, when?

(Same objection by Mr. Brown.)

159 Ans. For all services rendered I was paid in July and August, 1880.

Int. 33. What did she pay you for the services rendered in April, 1879?

(Same objection by Mr. Brown.)

Ans. I think the charge was ten dollars for what I did in April, 1879, which was paid in 1880.

Int. 34. Will you state whether any, and, if any, what, notice was given to you in regard to the removal and storage of the personal property removed from the house and stored?

(Same objection by Mr. Brown.)

Ans. Mr. Fairfield told me the furniture and property in the house

was removed to the Eastman Buildings, and that Mrs. Burgess could have them any time if she wanted them. Eastman Buildings are near the post office, as I understood.

Int. 35. Will you state in that connection when that was?

(Same objection by Mr. Brown.)

Ans. My best recollection is the latter part of June, 1880, or early part of July; I think the latter part of June.

Int. 36. State whether you at that time were, and were acting as, the attorney of Mrs. Burgess.

(Same objection by Mr. Brown.)

Ans. I was.

Int. 37. When Mrs. Burgess paid you your bill did you give her a bill or receipt for it?

(Same objection by Mr. Brown.)

Ans. I think it was paid in two sums; the first paid by Mrs. Burgess and the second by Mr. Brown, the gentleman here, or some one other than Mrs. Burgess; but that is only hearsay, as I did not receive it myself. I presume receipts were given.

Int. 38. State whether you communicated to Mrs. Burgess the removal of the personal property, of which you had notice, as stated.

(Same objections by Mr. Brown.)

Ans. My recollection is that I told Mrs. Burgess where Mr. Fairfield said the property was, and substantially what he said.

Int. 39. I understand you to have already said that you never, in behalf of Mrs. Burgess, tendered or had any money to tender
160 in settlement of the Newhall-Graffam suits, or for the redemption of the property levied upon and sold. State whether it is so.

(Same objection by Mr. Brown.)

Ans. I never received any money to tender, or made any tender.

Int. 40. Did you ever receive from Mrs. Burgess any direction or authority to make any tender or offer of that kind?

(Same objection by Mr. Brown.)

Ans. I cannot say I did in terms; she wanted done what was proper and best.

Cross-examination (*de bene*) by E. P. Brown, Esq., of counsel for complainant:

Cross-int. 41. The interview which you say you had with Mr. Fairfield was after you had received notice from Mrs. Burgess that Peter Graffam, one of the respondents, had taken possession of the house at Melrose and taken out the furniture, was it not?

Ans. I think it must have been; but it is impossible to fix dates.

Cross-int. 42. At this interview with Mr. Fairfield you say there was conversation in which Fairfield stated the sum of money re-

quired to be paid for the redemption of the property. Will you now state what was that sum?

Ans. It was quite a large sum, I thought, but I have forgotten the amount.

Cross-int. 43. Was it not $500?

Ans. My recollection is that it was seven hundred or a thousand; I should not put it below seven hundred on my recollection.

Cross-int. 44. You stated to him at that interview, did you not, that you believed Mrs. Burgess had never received any notice of the sale, and that the sum which he named to you was too much, did you not?

Ans. I told him Mrs. Burgess said to me that she had no notice of the sale, and the amount was too large. I think I used the term "outrageous," to my best recollection.

Cross-int. 45. When you used the term "outrageous" what reply did Fairfield make?

Ans. I don't remember the reply.

Cross-int. 46. Did he say to you in any form of words that
161 he had had trouble enough with Mrs. Burgess, and that he meant to beat her?

Ans. He said he had a great deal of trouble in the matter; don't remember his using the term "beat her."

Cross-int. 47. What term did he use? Please explain according to your recollection.

Ans. He said he had been to a great deal of trouble, and that she ought to have attended to it before; that he thought his client had got a good title. I told him that was a question, as under a statute recently passed it was a question whether a writ of entry would not reach it.

Cross-int. 48. After your interview with Fairfield referred to did you not report to Mrs. Burgess, in the presence of her husband, that Mr. Fairfield had told you that he had had a large amount of trouble in this matter; that Mrs. Burgess could not have her property except upon the payment of $1,100; that he had got her where he wanted her, and intended to beat her? Please state whether you did not so report to Mrs. Burgess in form or in substance.

Ans. Whatever Mr. Fairfield told me I endeavored to report to Mr. and Mrs. Burgess, and I think I did. The expression of "beat" I do not now remember. The amount may have been eleven hundred. I had the impression it was from seven to ten hundred. I then told them what he said.

Cross-int. 49. Did Fairfield not use to you the expression "clean her out" at that interview, and did you not so report at that interview?

Ans. I cannot say he did or did not. I reported whatever he said; I can't recollect.

Cross-int. 50. Did not Mr. Fairfield at that interview say to you that he had purposely contrived to conceal from Mrs. Burgess all knowledge of the sale; that he did not think she could help herself, and did you not so report to Mrs. Burgess in the presence of her husband?

Ans. I have no recollection now of a statement about the purpose of concealment.

Cross-int. 51. Did you have any conversation with Mr. Fair-
162 field at the time referred to why he required the payment of the large sum other than as you have now stated?

Ans. No further than this, that he ought to be paid for the trouble he and his client had had; and that if they had a good title they ought to be paid liberally for it, as they thought Mrs. Burgess was in fault.

Cross-int. 52. During the interview with Fairfield, did you call his attention to the fact that the total amount of the debt and costs—costs of proceedings under the sales in the Graffam and Newhall suits—was less than $200?

Ans. I figured the amount. I can't tell whether it was two hundred or less, but think it was less, and spoke of the amount obtained being very large.

Cross-int. 53. Did not Mr. Fairfield state to you at that interview that he intended to have $500 for his own services in the matter, and did you not so report to Mrs. Burgess?

Ans. At some of the interviews—there were several—the sum of $500 was named, but whether it was for his services as counsel, or his other Graffam's trouble, I am unable to recollect.

Cross-int. 54. But you are sure that it was one or the other, *i. e.*, either for him or him and Graffam?

Ans. I ought to say here, before you put that answer, that the Graffam suit embraced the Newhall suit, because Graffam controlled it, and the $500 referred to the whole of the trouble in both suits, as I understood it.

Cross-int. 55. Did you have any interview with Mr. N. L. Graffam at or about the time of your interview with Fairfield?

Ans. I saw him about that time. I can't state whether before or after, or what took place.

Cross-int. 56. Will you now state fully what communication you had with Mr. N. L. Graffam, or he with you, while the magistrate was writing the fifty-fifth cross-interrogatory?

Ans. I will. Not knowing his Christian name, I asked him if he was N. L. Graffam.

Cross-int. 57. Have you now stated the substance of the
163 conversations you had with Fairfield at the several interviews you had with him in June and July, 1880?

Ans. Substantially.

Cross-int. 58. Will you state whether you reported to Mrs. Burgess, in the presence of her husband, that you had stated to Mr. Fairfield that you should sue him and Mr. Graffam and any other person concerned in taking possession of that house?

Ans. Yes; I think I threatened a suit to any party who had anything to do with it. Mr. Eastman was named, as he had the property, and Mr. Graffam, as he was one of the parties. I presume I told Mr. and Mrs. Burgess; that is my recollection. I told Mr. Fairfield that I thought, under a writ of entry, that I could disturb

the whole matter under that enlarging statute giving three months' additional time for redemption under certain circumstances.

Cross-int. 59. Did you not also threaten Mr. Fairfield with suit with others?

Ans. I cannot say I did; I cannot recollect.

Cross-int. 60. Did Mr. Fairfield, in any conversation you had with him, state that he was personally present at the house and directed the taking out of the furniture?

Ans. I do not now remember.

Cross-int. 61. Did you understand from Mr. Fairfield, or from Mr. N. L. Graffam, that Mr. N. L. Graffam was counsel in the matter also?

Ans. I can't say Mr. Fairfield told me he was. I had some conversation with Mr. Graffam about the matters; can't recollect what it was; have no recollection that Mr. Graffam told me he was counsel, either.

Cross-int. 62. Did Mr. Fairfield tell you, in any interview you had with him, that he had had a man watching for several days to see when Mrs. Burgess's house was vacated, so that they could enter and take possession?

Ans. I do not recollect such a statement.

Cross-int. 63. Can you say that he did not tell you so?

Ans. I could not.

Cross-int. 64. Did you not, immediately after the interview with Mr. Fairfield, tell Mr. and Mrs. Burgess that Fairfield had
164 stated to you that he had employed one or more men to watch the house; that they had been watching several days before they found an opportunity of taking possession?

Ans. What Mr. Fairfield told me I reported to Mr. and Mrs. Burgess. I can't remember now. I tried to give them a pretty full report.

Cross-int. 65 And you did give a full report, did you not, of that conversation with Fairfield?

Ans. I think I did.

Cross-int. 66. You reported many things which you have now forgotten, did you not?

Ans. Very likely.

Cross-int. 67. Did you make any memoranda of your conversation with Mr. Fairfield on this subject?

Ans. I don't remember at this moment.

Cross-int. 68. Will you have the kindness to refer to the entries referred to in your direct examination (entries shown), and tell me if the first entry in the year 1880 is not under date of June 26?

Ans. It is.

Cross-int. 69. Please look at that receipt, dated June 30, 1880, and tell me whether it is in your handwriting.

Ans. It is.

Cross-int. 70. Is that the other receipt, dated Aug. 24, 1860, given by you to Mrs. Burgess?

Ans. No, sir; but Mr. Harding gave it.

Direct examination resumed:

Int. 71. The interview you had with Mr. Fairfield, when the conversation was had about the amount of money they would take, was that before or after the expiration of a year from the levy and sale to the first suit—the Graffam suit?

(Objected to by Mr. Brown as incompetent.)

Ans. My recollection is that it was after the year and within the fifteen months.

Int. 72. Was the sum which they named they would take named as a matter of compromise, or as the amount due on the judgment, with taxable costs and interest?

165 (Objected to by Mr. Brown, same as before.)

Ans. They were offers to settle the whole matter, and not accepted.

Int. 73. State whether or not at the time it was claimed by them that the title had become absolute, the time for redemption having expired.

(Same objection by Mr. Brown.)

Ans. It was on Graffam suit.

Int. 74. Was anything said at that time as to how Mrs. Burgess had acted and what trouble she had put them to? If so, state what was said on that subject.

(Same objection by Mr. Brown.)

Ans. Mr. Fairfield complained that she had put them to a great deal of trouble and expense; that she had not attended to the matter, and that she was very much in fault. That was the substance of it; I can't give all the particulars.

Int. 75. Was anything said as to how many attorneys had been to him about it? If so, what?

(Same objection by Mr. Brown.)

Ans. He spoke of more than one. He named Mr. Bryant and some other gentleman whom I do not know; one or more, I should say.

Int. 76. In speaking of the amount he wanted paid, was anything said about having had keepers on the premises, and how long he had kept them?

(Same objection by Mr. Brown.)

Ans. The matter of keepers was sometimes spoken of, but the amount I do not remember, nor the number of keepers.

Int. 77. Was anything said about their having given counsel an extra four days in which to enter their appeal after judgment had been obtained?

(Same objection by Mr. Brown.)

Ans. He spoke of that, the appeal, in the district court of Malden. He spoke of giving time in addition to the twenty-four hours.

The Graffam suit was brought originally in the district court of Malden.

166 Int. 78. Were you or not present in the court at Malden when they agreed to do that?

(Same objection by Mr. Brown.)

Ans. I was present in the court at Malden when Mr. Bryant the younger asked the court to postpone the case of Graffam against Mrs. Burgess, which the court refused, and the case was defaulted. Talk was had between Mr. Bryant and the court about extending the time for sureties. How long it was I can't tell, but it was more than twenty-four hours. Mrs. Burgess was not there. It was stated she was sick or had had no notice; I can't tell you which; some reason was given.

Int. 79. In your interviews with Mr. Fairfield, what was said, if anything, in regard to his having sent notice that the property would be levied upon if she didn't pay up?

(Objected to by Mr. Brown as above, and for the further reason that the witness had not testified to any interview with Fairfield prior to June 26, 1880.)

Ans. He said he had notified her by letter, as I understood him.

Int. 80. Did he say anything about having sent the notices of the sale in a newspaper published?

(Same objection by Mr. Brown.)

Ans. I do not now recollect.

Int. 81. Will you testify that the sum that they wanted when you saw Mr. Fairfield was over $500?

(Same objection by Mr. Brown.)

Ans. My best recollection is that it was from seven to ten hundred.

Int. 82. Are you so positive about it that you will swear it was not just *five* $500?

(Same objection by Mr. Brown.)

Ans. I cannot answer any better than I have.

ALONZO V. LYNDE.

Attest: HORACE G. ALLEN,
Special Examiner.

167 *Deposition of Samuel M. Fairfield.*

Direct examination by A. A. RANNEY, Esq., of counsel for defendants:

BOSTON, *Aug.* 9, 1881.

Int. 1. State your name, age, residence, and occupation, and how long you have been engaged in that occupation.

Ans. Samuel M. Fairfield; twenty-eight years; attorney-at-law; five years; Malden, Mass.

Int. 2. State whether you are the counsel who brought the suits of Graffam *v.* Burgess and Newhall *v.* Burgess, referred to in this suit.

Ans. I am.

Int. 3. State whether you were present when the Graffam suits was reached for trial and you were then ready for trial.

Ans. I was.

Int. 4. Who appeared and acted for the defendant in the suit before the judgment?

Ans. The younger Mr. Bryant, H. B., I think; not sure of the initials.

Int. 5. After the default and judgment, what was done, if anything, as to giving time, if desired, in which to take an appeal and perfect it?

Ans. It was extended, with my consent as counsel, from Tuesday morning till Friday morning of the same week, and I did not order execution until Saturday morning.

Int. 6. After you obtained execution, state what you did in course as to the levy of the execution on the property attached and the sale thereof.

Ans. I gave the execution some two weeks later, I think, after writing Mrs. Burgess and receiving a reply from her, to William C. Dillingham, deputy sheriff [of] Middlesex county, with orders to levy upon said property at once; and after several conferences with him concerning his proceedings in the premises we sold the same for the amount of our execution and costs.

Int. 7. Before you gave the execution to Mr. Dillingham, you say you wrote to Mrs. Burgess; did you keep a copy of it?

168 Ans. I did not.

Int. 8. How did you send it, and how address it?

Ans. By mail, postpaid, to Mrs. Christina J. Burgess, Providence, R. I.; also the street and number, which I have now forgotten.

Int. 9. Where did you get the street and number before you addressed it?

Ans. It was first given me by my client some months previous, and I had corresponded with her at that address before bringing suit.

Int. 10. State whether you got any reply to the letter you wrote her after obtaining judgment, and before giving the execution to the officer as stated.

Ans. I did.

Int. 11. Where is that reply; if you have it, will you produce it?

Ans. I have it, and here produce it, with the envelope, marked "Exhibits A and B, H. G. A., Com."

(Mr. Ranney, counsel for respondents, here calls on complainant for the production of the original letter from Mr. Fairfield to Mrs. Burgess, to which the one produced by witness is an answer.

Mr. Brown, of counsel for complainant, does not produce the letter.)

Int. 12. Will you state the contents of the letter to which the one produced is a reply?

Ans. I do not remember it perfectly. I wrote her in substance that I had obtained judgment and procured execution, and wished the same satisfied at once, and I think made further remarks as to other proceedings if the same was not paid.

Int. 13. Did she come and see you between the time of the receipt of this letter produced and the delivery of the execution to the officer, as promised in the letter produced?

Ans. My recollection is that she did not, but that the younger Mr. Pickering called as her attorney to see about a writ of review at that time.

Int. 14. At the close of the letter in question produced it says: "If this arrangement is not satisfactory, please let me know immediately." Please state whether you replied to it.

Ans. I believe I did not, but awaited her expected visit.

169 Int. 15. State what occurred between you and Mr. Pickering in the matter when he called, as you state.

Ans. After an introduction he stated briefly, as above, that he appeared on her behalf to get a review of the proceedings in the cases. I told him that I could not conceive of any chance for a review, and told him I would state to him the whole matter and he might use his own judgment. I then gave him a synopsis of what had been done in both cases, both before trial and interviews with Mrs. Burgess and Mr. N. B. Bryant, and also at the trial as given above. He then said that he would advise with Mrs. Burgess further and make up his mind what to do, and I think expressed considerable doubt as to whether it would pay to take the matter up, and I believe jocosely remarked that he should charge fifty dollars before he undertook anything on that statement.

Int. 16. State whether Mr. Lynde saw you about the matter before the levy.

Ans. I am quite confident he never did before the levy.

Int. 17. State whether Mrs. Burgess came to see you after the receipt of the letter spoken of, and before the sale under the levy.

Ans. I do not recollect having seen her between those dates.

Int. 18. After the levy and before the sale, what was done, if anything, about seeing Mrs. Burgess or informing her what you were doing in regard to the judgment levy?

Ans. I do not know that any further notice was given her than that of the officer in the required legal form.

Int. 19. Did you know anything about Mr. Peter Graffam going to see her; if so, what?

Ans. Not at that time, I think.

Int. 20. At any time?

(Mr. Brown objects to the following answer.)

Ans. He informed me that he had seen her; but the succeeding spring, 1880, he desired me to go out to Melrose with him, as he said she was then having repairs made on the place. I drove up with him one afternoon—I should judge it might have been in April or May—and stopped near the house within sight, and instructed him to go to the house and see her and about what to say.

He left the team in my care and went, and, coming back
170 after a little, informed me that he had seen her and talked with her. I have no personal knowledge of that or any other interview between them, other than my presence there.

Int. 21. Did you have any further correspondence with Mrs. Burgess in relation to the matter in question, save what you have now produced?

Ans. Yes; I had one other letter purporting to have come from her.

Int. 22. Please produce it.

Ans. I handed it to Mr. Clark, but I will get it and produce it.

Int. 23. Did you have anything to do with the sending of the notices by the sheriff, or the sale, or the property, to Mrs. Burgess?

Ans. The only notices, I think, that I personally sent were the orders of notice from the court in Malden, which were given upon the sheriff's return, showing that she was not within his jurisdiction.

Int. 24. Do you refer to the orders of notice on the writ before judgment?

Ans. I do.

Adjourned.

BOSTON, *Aug.* 16, 1881.

Int. 25. In your examination you referred to a letter which Mr. Clark had; state whether you have that letter; if not, what about it?

Ans. I am informed by Mr. Clark that he does not have it, and it is either mislaid or he gave it to Mr. N. L. Graffam some time since, and had not received it back.

Int. 26. What letter was that, and when received?

Ans. It was a letter, as I remember, I received in answer to my notification that I held a claim against her and previous to bringing suit.

Int. 27. Did you see her and have interviews with her before suit was brought? I don't ask you what was said.

Ans. I think not, previous to bringing suit.

Int. 28. Did you see her after bringing suit and before judgment?

Ans. I saw her on Thursday, Friday, and Saturday previous to the day of trial, which was Monday.

171 Int. 29. Did you go to see her or did she come to see you?

Ans. She called at my office.

Int. 30. State whether she knew at that time that suit had been brought in the Graffam and Newhall cases.

Ans. That was the principal topic of our conversation.

Int. 31. At the time before alluded to by you, when you sent Peter Graffam to see Mrs. Burgess after this levy and sale, did you give Mr. Graffam directions what to say to Mrs. Burgess?

Ans. I did.

Int. 32. What were they?

(Objected to, as incompetent and immaterial.)

Ans. I told him to ask her for a settlement of the claims which

he held, and to tell her that unless they were paid immediately he would have it to take out of her property.

Int. 33. At that time did you see Mrs. Burgess so as to know whether she was there?

Ans. I saw a lady in the back door speaking to Mr. Graffam, who, I have no doubt, was Mrs. Burgess.

Int. 34. Will you look at the lady now present, next to the desk, and see whether she is the same one or not?

Ans. I should certainly say it was.

Int. 35. How near were you to her at the time when Mr. Graffam was talking with her?

Ans. We stopped in front of the next house, or just this side; I should say about ten rods from her back door.

Int. 36. State whether you were present and knew of, or had anything to do with, the taking possession of the premises levied upon and sold, and the removal of the personal property therefrom. If so, state what you did or saw done in that regard.

Ans. I went out to Melrose on the 2.30 train, I think, to meet Peter Graffam, at his request, as he intended to take possession that afternoon. He drove me from the depot to the house and then went after job men, teamsters, to remove the goods. I sat upon the back piazza for an hour or an hour and a quarter, I should think, while they were removing part of the goods, and then had Mr. Graffam, Peter Graffam, drive me home to Malden.

172 Int. 37. State what Peter Graffam did in regard to taking possession of the house.

Ans. He entered by a window, I think, and then opened the front door and went for the job men, bringing back two or three teams. He then superintended or helped in the removal of some of the goods to the teams, and went down town to procure a place for their storage at a Mr. Emerson's, I think he said, and then sat near me, I believe, during part of the removal until he drove me home.

Int. 38. At the time when Peter Graffam entered, took possession, and removed the goods, was there any person present in the house or was it empty?

Ans. I neither saw nor heard any one there during my stay.

Int. 39. After the removal of the goods, what did you do and say, if anything, in regard to giving notice to Mrs. Burgess of the removal?

Ans. I told Mr. A. V. Lynde, who came to my office, as of counsel, and made a demand for the property, that the goods were stored at a Mr. Emerson's, near the post office, and were at her disposal at any time.

Int. 40. When you saw the goods being removed from the house, state how carefully it was done, so far as you observed, and whether anything was injured or not.

Ans. They were removed during my stay as carefully as is ordinarily done, as much so as I have ever had my own goods in my presence, and I saw no injury whatever to anything.

Int. 41. After the removal of the goods from the house, state

whether any keepers were placed in the house, to your knowledge, by Mr. Peter Graffam.

Ans. There was one there before I left, and he said he had one or two more engaged to come that night.

Int. 42. Can you give the date of this entry of the house, the taking possession, and the removal of the goods of which you have testified?

Ans. It was the last of June; to the best of my recollection, June 22, 1880.

Int. 43. Will you state whether you had an interview with A. V. Lynde, counsel for Mrs. Burgess, in relation to the claims
173 sued, and on which judgment was obtained; and, if so, what it was and when it was?

Ans. I had several interviews with Mr. Lynde at my office, and one with Mr. Peter Graffam at Mr. Lynde's office, during the last of June and first of July, 1880. Our conversation was entirely as to the legal status of the parties, and any redemption or compromise which we should agree upon in the premises.

Int. 44. State whether any tender or any offer of money was made to you by Mr. Lynde or Mrs. Burgess for the purpose of redeeming the property.

Ans. No offer was ever made by any one, in definite terms, but there was considerable talk as to what it could be compromised for, and at Mr. Lynd's office, after consideration with Mr. Peter Graffam, it was agreed by Mr. Graffam that the property might be redeemed at any time before the following Saturday for $500.

Int. 45. State whether, within the time, they accepted the proposition, or did anything toward redeeming.

Ans. I heard nothing from them until the following week, and then through new counsel.

Int. 46. And then what occurred with the new counsel, and who was he?

Ans. A gentleman came to my office announcing himself as counsel for Mrs. Burgess, and introducing himself as Mr. E. P. Brown, now present.

Int. 47. State what was said between you and Mr. Brown at that time.

Ans. It was a very short interview, from three to five minutes at farthest, and the main conversation was in substance that he had been telegraphed for, I think at New York, to come and attend to the matter; that he did not know there had been any previous counsel in the case; that he was acquainted with Mr. Burgess previously, though I think slightly, if any, with Mrs. Burgess. He wished to know what had been done, what our position was in the matter, what we claimed, and were willing to do about it. I gave him a very brief summary on the case, telling him that I thought we had a perfectly good title to the property, but did not desire to take any advantage, provided all our bills for expense and trouble were settled. He
174 asked about what that would be. I told him, I think, of our offer of the previous week to Mr. Lynde, which was made very grudgingly by my client, as it would hardly cover any expense

for himself for time and trouble, and told him, I think, that my client deemed $1,000 little enough, but that I could probably get him to take $750 at that time in full satisfaction of both claims, costs, and trouble, and then asked him what he proposed to do, and he told me he had no definite instructions, as he had so recently come into the case, but he would confer at once and let me know immediately. I told him this would be necessary in my case, as I was about to leave on my vacation, and I should like to have it settled before I went.

Int. 48. Did you see him again?

Ans. I did not, I believe.

Int. 49. Did Mr. Brown, in that interview, state that he would pay you forthwith $500 for Peter Graffam's deed of the property?

Ans. He told me distinctly that he had no authority to make any offer, and could not say what would be done until further consultation with his client.

Int. 50. Mr. Brown, in his testimony, says this: "I stated to him, in reply, that I would pay to him forthwith the sum of $500 for Peter Graffam's deed of the property; to which he replied he would not take that sum, and would be unwilling to take the sum of $750, unless there was a full discharge of all liability on account of the removal of the personal property from the house, or this in substance." Will you state how that was—whether that was said or not; and, if not, what was said on that subject, as near as you can give it?

Ans. No such definite proposition was ever made me by any one of the payment of any sum to redeem; and as to my statement concerning the personal property, I had talked that over with Mr. Lynde previously several times; so I may have stated that my client would not now settle for any sum unless fully indemnified for any suits arising out of the taking possession of the property. I probably did also state, as I have before said, that my client would not at that time settle for $500, as he had told me so decidedly at several interviews.

Int. 51 (*de bene*). Mr. Brown says in his testimony, in sub-
175 stance, that you replied to him that you thought Mrs. Burgess had a right of action to recover the value of the personal property, and that she had never been notified that the property was at her disposal, and that you didn't consider it necessary. Will you state how this was?

Ans. No such conversation, to my knowledge, was ever had.

Int. 52 (*de bene*). Was anything said by Mr. Brown in that interview about Mrs. Burgess not having noticed that the property had been levied upon and sold?

Ans. Not to my knowledge. He made very few statements, as he said he had so recently come into the case and knew very little about it.

Int. 53 (*de bene*). Mr. Brown says, in substance, that he said Mrs. Burgess had no knowledge of either of the executions or of the subsequent sale of the property, and that you replied that it didn't make any difference, that the officer had done everything which the law

required. Will you state how this was, and whether you so stated or not?

Ans. I am quite confident that he never, to my knowledge, made such a statement, though I may have said in my summary of the case that the officer had done everything right and legally, and I did not see any way to reopen the matter.

Int. 54 (*de bene*). Did you have any talk as to how you made up the $750?

Ans. I had certainly talked it over with Mr. Lynde previously, and I may have mentioned it in answer to some question of Mr. Brown at that time.

Int. 55 (*de bene*). Mr. Brown says that you told him that you advised Peter Graffam to purchase the Newhall title by sheriff's sale, and wait until the expiration of the year from the sale to Newhall before the matter was stirred up, and that you added this: "Mr. Brown, we have had trouble enough with this woman, and we never intended that she should redeem this property if we could help it." What have you to say as to that?

Ans. I could not have made such a remark, as it was entirely contrary to the truth and facts.

Int. 56 (*de bene*). Did you say that in words or substance?

176 Ans. The only part of it that I possibly could have given in substance was that we had had a great deal of trouble in the matter, and would have to be paid for it before releasing our claims.

Int. 57 (*de bene*). Did you say anything to him about other counsel for Mrs. Burgess having to sue for their fees?

Ans. In looking up the title to the property I found a large number of attachments among them; one of Mr. A. V. Lynde, which was levied on, and which I believe he informed me was for services. If I made any statement concerning services it probably was in connection with that fact, although I do not now remember it.

Int. 58 (*de bene*). Mr. Brown says in substance in that interview you told him or repeated to him that when they went into this matter they intended to clean her out. Will you state whether that is true or not?

Ans. It is impossible that I could have used any such expression, and I never did so, to my knowledge, to him or any one else.

Int. 59. Have you read the testimony of Mr. Brown as printed in the record of this case?

Ans. I have read part of it from a manuscript, I think, that Mr. Graffam handed me some months ago. I believe I did not read it all then, and I have not seen it since.

Int. 60 (*de bene*). It occupies, as printed, two and a half full pages. What have you to say as to the length of the conversation as compared with that as stated?

Ans. Mr. Brown's memory must certainly have failed him, as the conversation which took place at that time in my office was mainly a report by myself of what had been done, and could not have occupied one-half the time that I should judge would be required to develop the amount of testimony as given by himself.

Int. 61 (*de bene*). He states in his account of this interview how he went into a full conversation about the matter himself, and purports to give all Mrs. Burgess's account of the matter and a full argument of the case on his side. What is your recollection as to whether that was done or not?

Ans. It certainly never happened as he said, as I have before stated that he knew little about the matter and had no proposition to make.

177 Int. 62. Did he (Mr. Brown) see you again before he brought his bill in equity?

Ans. I do not recollect to have seen him again at all.

Int. 63. What connection with these suits and this whole matter had you with Mr. Fairfield?

Ans. I acted in my capacity as attorney and counsel for both Peter Graffam and E. B. Newhall.

Int. 64. Had you any interest in the matter other than as counsel?

Ans. None whatever.

Int. 65. From the time when the claims came into your hands, and in all that you did or had done or knew to be done about it, was there any attempt at secrecy or concealing anything you did from Mrs. Burgess?

Ans. I never dreamed of any, and made more desperate efforts to get a settlement with her, I think, than any other claims I ever held.

Int. 66. What directions and instructions did you give the sheriff in regard to the levy and sale?

Ans. None except those I generally give; a description of the property and an order to levy under the later law; *i. e.*, not under the law of set-off, with the usual precautions to be particular, following all legal requirements.

Int. 67 (*de bene*). Will you please state whether you had anything to do, and, if so, what, with the making out of the deed of the premises levied upon and sold in said suits from Peter Graffam to N. L. Graffam or to Herbert F. Doble?

Ans. I drew up a deed of the premises from Peter Graffam and wife to Herbert F. Doble during the early part of July, 1880.

Int. 68 (*be bene*). Was it before or after the time when the entry was made upon and possession taken of the property levied upon and sold and the personal property removed, as you have stated, that you made this deed?

Ans. It was some two or three weeks afterwards.

Int. 69 (*de bene*). State what you know about the deed first being made to N. L. Graffam and afterwards being changed to Mr. Doble.

178 Ans. Mr. Peter Graffam, in coming to my office to see me, met Mr. N. L. Graffam, with whom I then was, and without my knowledge made an agreement with him to sell the property to him, giving him the refusal of it until a certain day. He then requested me to draw up a deed of the property to Mr. N. L. Graffam, which I did; but owing, as I understood it, to Mr. Graffam's failure to raise the money, which they had agreed should be paid down, and some other reason which I did not know, Mr. N. L. Graffam brought

his cousin, I believe he is, Mr. H. F. Doble, as a purchaser in his (N. L. Graffam's) stead. I then erased N. L. Graffam's name with my penknife and rubber, I believe, rather than make a new deed, and wrote the name of Herbert F. Doble in its place, and took the deeds or deed with me to Malden, and had Peter Graffam and his wife come to my house one evening and acknowledge the same before me, after which Peter Graffam took the deed himself, and I did not see it until it was delivered into my office, when Mr. Doble gave his check for the money and the papers were passed.

Int. 70 (*de bene*). How long after the deed had been made out in part or in whole to Mr. N. L. Graffam was it changed so as to run to Mr. Doble?

Ans. I don't recollect now; I should think a day or two.

Int. 71 (*de bene*). Had the deed been executed and delivered to N. L. Graffam before it was changed and delivered to Mr. Doble?

Ans. It had not; because, as I understood it, N. L. Graffam did not have the money to carry out the bargain at that time.

Int. 72. State whether the grantee in the deed was changed in the deed from Graffam to Doble with or without the consent of Peter Graffam.

Ans. It was with his consent and at his desire.

Int. 73 (*de bene*). Will you state whether Mr. N. L. Graffam, up to the time of his talking of purchasing the property, had had anything to do about the matter; I mean the suits, the levy, and the sale?

Ans. He certainly did not up to the time of the sale, to my knowledge.

Int. 74. Had you and he any business relations or connections as lawyers, or any interest in each other's business?

179 Ans. None whatever, except the fact of my having desk room in his office during a portion of the time these matters were pending.

Int. 75 (*de bene*). Will you be kind enough to read through again at your leisure the testimony of Mr. E. P. Brown in the printed record furnished by the clerk, so far as they relate to his interview with yourself, and see what further you have to say in relation to the truth of any of his statements, as they there appear, beyond what you have already said?

Ans. I will do so.

Adjourned.

AUG. 17, 1881.

Int. 76. Will you please state whether you have read the interview with Mr. Brown as stated by him, as requested, and state whether you have anything further to say beyond what you have already said in detail?

Ans. I have read what purports to be the interview between Mr. Brown and myself, as given in the printed testimony, and should characterize it as a strange perversion, and as showing a wonderful lack of memory, both in general and in detail.

Cross-examination by E. P. BROWN, Esq., of counsel for complainant:

Cross-int. 77. Have you any other business besides that of practising law?

Ans. I have not.

Cross-int. 78. For how long a time have you devoted your attention exclusively to the legal profession?

Ans. Five years next September, with the following exception, that during the last year I assisted my mother, who became involved in a small business transaction, as a sort of general agent, not, however, interfering at all with my legal practice.

Cross-int. 79. During the years 1879 and 1880 did you keep books of account in your professional business?

Ans. Not to any great extent in 1878 and 1879; but I believe on Jan. 1, 1880, I opened a book of single entry of my office work.

Cross-int. 80. Please produce all books of account or memoranda of original entries made by yourself, or any clerk in your
180 office, for the years 1878, 1879, and 1880, in which you have any account with Peter Graffam or Edward B. Newhall.

Ans. I have it; here it is.

Cross-int. 81. Are these entries in your own handwriting referring to an account with Peter Graffam?

Ans. They are.

Cross-int. 82. Please read to the examiner all the entries which appear upon your book, showing what you did in the suit of Peter Graffam against this complainant, and charges you made therefor, giving dates in each instance.

Ans. Suit in Malden, Feb. 1, 1879; amount, $28.95; order of notice; default March 10, 1879; levy April 3, 1879; sold property May 17, 1879, for costs; bought in Newhall equity April 28, 1880; drew papers of indemnity and deed; charges in above, $210; paid. That is all.

Cross-int. 83. Have you now omitted any entries which appear in that account with Peter Graffam?

Ans. Two entries in the account read as follows: Amount of Newhall equity as above, $80; June 9, Graffam paid me costs in his suit to the amount of $39.64.

Cross-int. 84. Does the entry, "amount of Newhall equity, $80," indicate the amount paid to Newhall on that date for his deed?

Ans. I think not, as I now recollect it, as I believe that includes cash, costs, officer's fees, etc., which were paid out in cash.

Cross-int. 85. Are we then to understand that the $80 was the amount paid for the Newhall deed, including what had been previously paid by way of costs, as indicated in your last answer?

Ans. I am not sure about that now. I should have said, from recollection, that the whole amount of his claim, including costs, was something over $100; will not be positive.

Cross-int. 86. Please refer to page 120 of the printed record, and tell me if the amount there stated is what purports to be the officer's return on the execution of Newhall against the complainant was

not the total sum of money received by Newhall as the consideration of his deed to Peter Graffam?

Ans. I should not wish to dispute the record, and have no means now of determining other than I have stated.

181 Cross-int. 87. Did you prepare the deed of William C. Dillingham to Edward B. Newhall, dated Aug. 13, 1879, and acknowledged Sept. 26, 1879, or did you examine the same after it had been delivered to Newhall?

Ans. I am very positive I did not draw the deed, and I have no recollection now of having examined it.

Cross-int. 88. Please examine copy of said deed, attested by Charles B. Stevens, register, and tell me whether you had anything to do with the original, either by way of examination before it was executed or by way of examination of the original before it was recorded at the Middlesex records.

Ans. I do not recollect having given special examination to the deed, either before or after, but have no doubt that I saw it before it was recorded.

(Complainant here gives notice that she desires the production by the respondent Graffam or Newhall, or by either of the respondents who may have the possession of the original of said deed, of the deed from William C. Dillingham to Edward B. Newhall. The complainant here offers in evidence a certified copy of deed from William C. Dillingham, deputy sheriff, to Edward B. Newhall, dated Aug. 13, 1879, and recorded in Middlesex registry of deeds, book 1,525, page 17, marked "Fairfield Exhibit C, H. G. A., Examiner.")

Cross-int. 89. The entry in your book in these words, "Charges in above, two hundred and ten dollars," in figures, "p'd," paid; do you wish to be understood as indicating that $210 was paid you by any person; and, if so, by whom?

Ans. It was the amount paid me by Peter Graffam.

Cross-int. 90. Did that sum, $210, include the consideration which your entries indicate was paid to Mr. Newhall?

Ans. Not if I understand your question. The $210 was paid me, as fee for my professional services, by Peter Graffam.

Cross-int. 91. Did $210 include your professional services in both cases—the suit of Graffam *v.* Burgess and Newhall *v.* Burgess?

Ans. It did not. I charged Mr. Newhall $16.75 for services rendered him.

182 Cross-int. 92. Please give me the date when the $210 was paid to you by Peter Graffam.

Ans. I have not it in my record, but it was paid, as I now remember it, by personal check of Peter Graffam upon the First National Bank of Malden, somewhere from July 15 to July 25 or 26, 1880.

Cross-int. 93. Did you deposit that check to your own account; if not, what did you do with it?

Ans. I certainly did, if I received it, deposit in the Atlas National Bank of Boston on my account.

Cross-int. 94. Please produce your deposit-book of the Atlas National Bank showing the deposit of the check referred to.

Ans. I will do so, provided I have it. Yes, I have it; here it is.

Cross-int. 95. Was this check payable to your order?

Ans. I am quite sure it was.

Cross-int. 96. Referring now to your deposit-book in the National Atlas Bank, please give the date when this check was deposited to your account.

Ans. July 17, 1880.

Cross-int. 97. Was the check paid?

Ans. It was.

Cross-int. 98. From the time when the claim of Peter Graffam against the complainant came into your hands for collection down to the time of the receipt by you from Peter Graffam of the check of $210, had you received from Peter Graffam any other sum of money for services or expenses in said suit?

Ans. I believe he paid me the officer's costs and the tax costs of court; that is all.

Cross-int. 99. Are you sure about that?

Ans. I am sure that he paid me nothing further for fees, but am not so confident that he may not have advanced some other small sum for costs.

Cross-int. 100. Please read to the examiner what you have upon your book showing your dealings with Edward B. Newhall, in the suit of Newhall against the complainant.

Ans. "Suit in Malden, Feb. 1, 1879. Am't, $30.

183 " Order of notice.

" Default March 10, 1879.

" Levy on property April 3, 1879.

"Satisfied ex'n April 28, 1880. Charges p'd, $16.73."

Cross-int. 101. Please give the date when $16.73 was paid you by Newhall.

Ans. I do not now recollect, but it was paid in this way: Peter Graffam gave me the sum of $80, I think, to purchase the Newhall claim. With that sum I paid the officer's charges, the taxed costs, and my own fee against Newhall, and gave him (Newhall) the balance, some $17 or $18, of his claim against the complainant.

Cross-int. 102. When was it that Peter Graffam gave you the $80, as stated in your last answer?

Ans. As I have it stated on my book, April 28, 1880.

Cross-int. 103. At or before the time when you paid Newhall the money, as stated, had Peter Graffam received the deed from Newhall to himself of the property as described in complainant's bill?

Ans. Not to my present recollection.

Cross-int. 104. The entry upon your book, in these words, "Satisfied ex'n April 28, 1880," means what?

Ans. That upon that date I satisfied his execution with the $80 paid me by Peter Graffam, as I suppose.

Cross-int. 105. Did you have the execution in your possession or under your control on that date, April 28, 1880?

Ans. No, sir; I think I did not see the executions after giving them to the officers in April, 1879.

Cross-int. 106. Was it by your instructions that Peter Graffam purchased the title of Edward B. Newhall, as referred to in your previous answer?

Ans. It was.

Cross-int. 107. Did you draw the deed from Edward B. Newhall to Peter Graffam conveying the premises described in complainant's bill, and already referred to by you in your previous answers?

Ans. I do not now recollect ever having seen or heard of such a deed, and certainly have not referred to it.

184 Cross-int. 108. Please produce the instrument, conveyance, or whatever it may be, of Edward B. Newhall to Peter Graffam, which purported to convey the title of Newhall, under the deed of Dillingham to Newhall.

Ans. I haven't it in my possession, and have not held it at all from that time to this.

Cross-int. 109. Did you draw such an instrument at any time?

Ans. I did.

Cross-int. 110. Do you know where it is?

Ans. I do not.

(Complainant here offers in evidence a certified copy of the conveyance or assignment of Edward B. Newhall to Peter Graffam.)

Cross-int. 111. In your answer to direct Int. 6 you speak of writing Mrs. Burgess a letter and receiving a reply from her. Where is the letter which you received from her?

Ans. It is the one already put in evidence, marked "Exhibit A, H. G. A., Com'r."

Cross-int. 112. When did you receive that letter?

Ans. I have no means of knowing, other than the postmark and the date when it was placed upon file among the papers at my office.

Cross-int. 113. Will you now answer the question when you received that letter?

Ans. I cannot tell further than above stated. From the postmark I should judge on March 20, 1879.

Cross-int. 114. Where is the memorandum showing when you placed it on file?

Ans. I do not know; I think destroyed, as it was a large envelope containing the papers of the case, which was at length worn out.

Cross-int. 115. Are you familiar with the handwriting of the complainant?

Ans. I am not.

Cross-int. 116. Then will you explain why you say this letter is from Mrs. Burgess?

Ans. Because upon March 17, 1879, I wrote a letter, as above mentioned in my testimony, and received in due course of mail this answer, purporting to come from her.

185 Cross-int. 117. Did you personally deliver to the United States mail the letter which, in answer to Int. 6, you say you wrote Mrs. Burgess? Please answer yes or no.

Ans. Yes. I shall wish to explain that answer further if you confine me to that answer, Mr. Brown.

Cross-int. 118. Did you personally know Benj. W. Conant, whose deposition in this case is found on pages 64 to 67, inclusive, of this record?

Ans. I do not know that I ever met him or heard of him.

Cross-int. 119. What was the date of the interview which you say you had with Mrs. Burgess, which is referred to in your answers to Ints. 29 and 30?

Ans. The sixth, seventh, and eighth days of March, 1879.

Cross-int. 120. Upon what street was your carriage standing when, as you say, you were sitting in it and saw Graffam speaking to a lady whom you judged was Mrs. Burgess, as referred to in your answer to direct Int. 33?

Ans. I do not know the names of streets in Melrose at all. But it was the street running down by the side of the house and lot, and upon which both front and back doors looked, as I remember.

Cross-int. 121. What was the date when that affair took place referred to in answer to direct Int. 33?

Ans. I cannot more definitely fix the time than I have. It was in the spring of 1880, either April or May, I think.

Cross-int. 122. Why can't you tell more definitely than you have done?

Ans. Because I have nothing to fix it by other than the ground was well settled, and yet it was cool enough for a heavy lap robe in the buggy, and that Mrs. Burgess was having repairs made around the house.

Cross-int. 123. What repairs did you observe were going on around the house?

Ans. I think carpenters were engaged around the back piazza and that the walks from the doors were torn up.

Cross-int. 124. Are you willing to testify that occurrence did not take place in the month of June, 1880?

Ans. My recollection would be as I have stated.

186 Cross-int. 125. Will you now answer the one hundred and twenty-fourth cross-interrogatory?

Ans. I am not willing to testify against my recollection, sir.

Cross-int. 126. Do you mean to say that, according to your best recollection, the occurrence referred to did take place prior to the first day of June, 1880?

Ans. I have already so stated, and will again say so.

Cross-int. 127. Will you testify that, according to your best recollection, the occurrence referred to took place prior to the twentieth day of May, 1880?

Ans. No, sir; I have no date to locate it by at present.

Cross-int. 128. Is it your belief that the occurrence referred to took place between the twentieth day of May and the first day of June, 1880?

Ans. I have no reason for believing anything concerning those special dates.

Cross-int. 129. Please give the date when, as you say in answer to

the direct Int. 36, you went to Melrose on the 2.30 train to meet Mr. Peter Graffam at his request.

Ans. Tuesday, June 22, 1880.

Cross-int. 130. How came you to know that Mr. Graffam wanted to see you in Melrose on that day? Did you receive from him any letter or telegram?

Ans. No, sir; but he called upon me the evening previous at my house, and again that morning before I was up, and told me that he proposed to take possession that day, and wished to know if I would go out there.

Cross-int. 131. Do you mean to testify that you did not receive on the 22d day of June a telegram, letter, or any other communication, notifying you that your presence was required in Melrose that afternoon?

Ans. I am quite confident that I never received a telegram in my life, nor any written communication, from Peter Graffam; and I am sure no other person in any such manner notified me.

Cross-int. 132. Have you not stated to one or two persons since the twenty-second day of June, 1880, that you received a
187 telegram notifying you that Mrs. Burgess, on the twenty-second day of June, 1880, was not in the house, or upon the premises?

Ans. I could not so have stated to any one, as it is contrary to the fact.

Cross-int. 133. When you went to Melrose on the twenty-second day of June, 1880, did you take any person with you; and, if so, for what purpose?

Ans. I procured a man as keeper, at the desire of Mr. Graffam, and he went out on the train with me, but not in my company.

Cross-int. 134. What is his name?

Ans. I do not know.

Cross-int. 135. Where did you get him?

Ans. I think he was in Mr. Wm. H. Swift's office in Joy's Building, but I am not sure.

Cross-int. 136. To whom did you apply for the services of that person?

Ans. As I now recollect, I asked Mr. W. C. Cogswell where I could handily get a keeper, and he told me of this man, and I believe went himself at my request to find him and make the appointment with him.

Cross-int. 137. Will you ascertain the name of the person, and furnish it after the adjournment?

Ans. I will try to.

Cross-int. 138. When you got to Melrose on the afternoon of the 22d of June, 1880, I understand you went directly to the house, and whom did you meet there? Give the name of each and every person who was there when you arrived or who came there to participate in taking out the property.

Ans. I met Mr. Peter Graffam, as I have before said, at the station, and saw no one at the house except him, the aforesaid keeper and two or three job men, whose names I never heard, I think.

Cross-int. 139. Prior to the twenty-second day of June, had Mr. Graffam, under your instructions or with your knowledge, procured any man to watch the house to ascertain when Mrs. Burgess would be absent?

Ans. Not by my direction or to my knowledge, other than his own personal surveillance whenever he was in that neighbor-
188 hood, and also his informing me that he had inquired of the neighbors, and some of them had volunteered information. What it was I don't know.

Cross-int. 140. Have you not stated to one or more persons that Mr. Graffam, prior to the twenty-second day of June, 1880, with your knowledge or under your direction, had caused the premises to be watched and see when Mrs. Burgess should be absent, in order that possession might be taken during her absence?

Ans. I could not have stated that anything of the kind occurred by my direction. I may have said that the premises were watched.

Cross-int. 141. And watched for the purposes indicated in the previous interrogation?

Ans. Mr. Graffam informed me several times that he was keeping watch of the premises to find out when she was there and when she was not.

Cross-int. 142. Who opened the window when you first entered into the house?

Ans. The entry that I have mentioned previously I now think was made by the keeper, who went up on the train at the same time with myself, and he opened the window for that purpose, I think.

Cross-int. 143. Did you make any memoranda of that conversation with Brown, referred to in Int. 47?

Ans. I did not.

Cross-int. 144. Are you willing to swear that that conversation occupied less than half an hour?

Ans. Yes, sir.

Cross-int. 145. What reason can you now give for having advised Peter Graffam to purchase the title of Edward B. Newhall, which said Newhall had acquired by sheriff's deed?

Ans. I formed an opinion in the premises that Newhall had a right to redeem the Graffam title or claim, and as I was counsel for both I stated to Newhall that he had the right if he desired it, and told him and Peter Graffam also that one had better buy the other out and hold both claims. Newhall was not disposed to do it and Graffam was, so I settled the matter in that way.

Witness desires to explain his answer to Cross-int. 117 as follows: I either deposited personally the letter referred to in
189 the United States letter-box or placed it in the letter-box in our office, as is usual and as is our custom, between the hours for mailing, from which it would be taken directly to the post office.

SAM. M. FAIRFIELD.

Attest: HORACE G. ALLEN,
Special Examiner.

(Letter put in evidence, p. 135.)

EXHIBIT A. H. G. A., *Commissioner.*

MR. FAIRFIELD.

DEAR SIR: Your letter of March 17 was received yesterday. I will be down to see you next week. I should have been in Boston sooner, but my health was not good enough. If this arrangement is not satisfactory, please let me know immediately.

C. J. BURGESS.

(Envelope put in evidence, p. 135.)

EXHIBIT B. H. G. A., *Commissioner.*

(Providence, R. I., Mar. 19, 2 p. m.)

S. M. FAIRCHILD, Esq.,

23 Court St., Boston, Mass.

(On back:) (Boston, Mass. Carrier. Mar. 19, 7 p. m.)

FAIRFIELD EXHIBIT C. H. G. A., *Examiner.*

Know all men by these presents, that I, William C. Dillingham, of Everett, in the county of Middlesex and Commonwealth of Massachusetts, and a deputy sheriff under Eben W. Fiske, Esq., sheriff of said county, having on the third day of June, in the year of our Lord one thousand eight hundred and seventy-nine, by virtue of a writ of execution which was issued upon a judgment recovered at the first district court of Eastern Middlesex, holden at Malden, within and for the county of Middlesex, on the tenth day of March, in the year of our Lord eighteen hundred and seventy-nine, by Edward B. Newhall, of Malden, in the county of Middlesex, against Christina J. Burgess, of Providence, in the county of Providence and State of Rhode Island, in the sum of thirty-three dollars and forty-one cents damages, and costs of suit taxed at fifteen dollars and fifty-five cents,
190 seized and taken all the right which the said Christina J. Burgess had on the third day of June, in the year of our Lord eighteen hundred and seventy-nine, being the time when the same was taken on execution to redeem from a former sale on execution made by me on the seventeenth day of May, A. D. 1879, the following-described real estate, to wit, a certain piece or parcel of land, with the buildings thereon, situated in Melrose, in said county of Middlesex, and bounded and described as follows, viz: Beginning at the junction of Emerson and Myrtle streets, and thence running south 76° east one hundred and twelve feet on said Emerson street; thence south 19° west one hundred and seventy feet on land now or formerly of John Shelton; thence north 76° west one hundred and twenty-one feet and eight inches to said Myrtle street; thence northerly by said Myrtle street one hundred and seventy feet to the point of beginning, containing about 19,850 square feet, more or less; and having on the sixteenth day of June last, being thirty days at least

before the time of sale hereinafter mentioned, given notice in writing, to the said Christina J. Burgess, of the time and place of sale by posting up notifications thereof in one public place in said town of Melrose, and in one public place in each of the towns of Malden and Wakefield, being two towns adjoining said town of Melrose, and also having caused an advertisement of the time and place of sale to be published three weeks successively, before the day of sale, in the public newspaper called the Malden Mirror, printed at Malden, in said county of Middlesex, on the thirteenth day of August, in the year of our Lord eighteen hundred and seventy-nine, I made sale of said right of redemption at public auction to Edward B. Newhall, of Malden, in said county of Middlesex, he being the highest bidder for the same, for the sum of eighty-one and $\frac{21}{100}$ dollars. Now, therefore, in consideration of said sum of eighty-one and $\frac{21}{100}$ dollars, to me paid by the said Edward B. Newhall, the receipt whereof I do hereby acknowledge, I have given, granted, bargained, and sold, and do by these presents give, grant, bargain, sell, and convey, to the said Edward B. Newhall, his heirs and assigns, forever, all the right which the said Christina J. Burgess had of redeeming the aforesaid real estate at the time aforesaid. To have and to hold the same to the said Edward B. Newhall, his heirs and as-
191 signs, to his and their use forever; subject, however, to be redeemed agreeably to the law in such case made and provided. And I, the said William C. Dillingham, in my said capacity of deputy sheriff, do covenant with the said Edward B. Newhall, as aforesaid, that in making said sale, and in everything concerning the same, I have complied with, and observed the rules and requisitions of the law for making sales of rights in equity to redeem real estate. But I do not warrant or defend to the said Edward B. Newhall that the said Christina J. Burgess had any right, title, or interest in said estate at the time aforesaid. In witness whereof, I, the said William C. Dillingham, in my said capacity of deputy sheriff, have hereunto set my hand and seal this thirteenth day of August, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] WILLIAM C. DILLINGHAM,
Deputy Sheriff.

Signed, sealed, and delivered in presence of us—
——— ———.
——— ———.

SUFFOLK, *ss:*

SEPTEMBER 26, 1879.

Then the above-named William C. Dillingham personally appeared and acknowledged the above instrument by him signed to be his free act and deed. Before me—

HORACE D. GOVE,
Justice of the Peace.

MIDDLESEX, *ss*:

OCT. 24, 1879.

Received and recorded.
Attest: CHAS. B. STEVENS, *Register*.

A true copy of record, book 1,525, page 17.
Attest: CHAS. B. STEVENS, *Register*.

Deposition of James W. Pickering.

Direct examination by A. A. RANNEY, Esq., of counsel for complainant:

BOSTON, *Aug.* 22, 1881.

Int. 1. What is your name, age, residence, and occupation?

Ans. James W. Pickering; thirty-three years; Boston; lawyer.

Int. 2. State how long you have been a lawyer, and whether alone or with some one else.

192 Ans. Eleven or twelve years, and connected with my father till about 1877.

Int. 3. State whether you know Christina J. Burgess, this complainant. If so, how long have you known her and how many times you ever saw her?

Ans. I know the lady; have known her since the summer of 1877, I should say. Have seen her first and last from half a dozen to a dozen times.

Int. 4. Please state whether you ever saw Mrs. Burgess in reference to two suits or judgments recovered against her by Peter Graffam or one Newhall and involved in this suit. If so, when was it, and how many times, if more than once, and what you did about it? State all.

(Objected to by Mr. Brown, unless it appears that the interview was not a professional one.)

Ans. I saw her on fast day, April 3, 1879, at my office, 33 School street, Boston, and on two or three days following at the same place, and had interviews with her in regard to two cases brought by mechanics, but whose names I am not certain of, though I think Newhall was one, and in which judgments had been obtained against her upon default. Each of these interviews related to an employment of myself by her to obtain a review of said actions or to advise her in regard to the expense and feasibility of obtaining a review. I made a charge against her, but have as yet been paid nothing, and have not rendered her my bill as yet. I think that answers the question.

Int. 5. You are requested to state how you fix the date on which she called on you in reference to said suit.

Ans. By a memorandum in writing made by me at the time in my office journal, which I have here with me.

Int. 6. Will you give in full the memorandum as you made it at the time, with the date?

(Same objection.)

Ans. The date of the entry is as follows: "Thurs., Apr. 3, '79." The memorandum is as follows: "Mrs. C. J. Burgess, of 469 Pine St., Prov., c. and h'd long talk w. J. F. P., ab't obt'g review of 2 cases in Judge Pettengill's c't, etc." That is all.

193 Int. 7. State whether, in pursuance with that interview with Mrs. Burgess, you called on Mr. Fairfield, the counsel for the plaintiff in said suits at law; and, if so, on what day, what he said to you, if anything, about his having made or going to make a levy on the property attached.

(Same objection.)

Ans. I did call upon Mr. Fairfield the next day, but whether I saw him on April 3 I am not certain. Mr. Fairfield spoke to me about a levy that had either been made or was about to be made upon real estate of Mrs. Burgess, in Malden, I think, a place, my recollection is, where Mrs. Burgess had previously lived. This levy was on the judgments spoken of. My impression is that Mr. Fairfield told me when I saw him that the levy had been made, but I am not positive as to this. He spoke to me about some notice which had either been or was about to be published in some newspaper relating to said suits, but whether to the levy I am not certain. I remember speaking with Mr. Fairfield in regard to proposed proceedings for a review, and that Mr. Fairfield was not disposed to yield any advantage he had obtained. That's all.

(That part of the answer which refers to the conversation with Mr. Fairfield, in the absence of complainant, specially objected to.)

Int. 8. When you say you are not certain about this, what do you mean, whether that you are uncertain about his speaking to you at all about the levy, or whether you are uncertain whether the levy had then been made or was about to be made?

Ans. Simply as to whether it had actually been made, or was about being made.

Int. 9. Will you state whether Mrs. Burgess saw you again on April 4, 1879, referring to your book, if necessary, to refresh your recollection.

(Same objection.)

Ans. Yes, she did.

Int. 10. Will you state whether you have any memorandum of it on your books. Please give the same, if there is any.

(Same objection.)

Ans. I have. At the top of the page is the date: "Fri., Apr. 4, '79." The memorandum is in the handwriting of my wife,
194 except the last three words, which are in mine, and is as follows: "Mrs. Burgess, of Providence, in, and had a long talk with J. W. ab't review, etc." The words "ab't review, etc." are in my handwriting, but was written by me at the same time as the rest of the entry, *i. e.*, on the same day.

(So far as this answer contains memoranda of Mrs. Pickering, specially objected to.)

Int. 11. On what days were the entries you have given made; I refer now to both the entries you have given on the 3d and 4th?

Ans. On the days of the dates at the tops of the several pages which I have given.

Int. 12. Can you state whether you reported to Mrs. Burgess or not what Mr. Fairfield said about the levy?

(Objected to as incompetent.)

Ans. My interview with Mr. Fairfield related to the subject-matter of my employment by Mrs. Burgess, and I did state to her fully all that Mr. Fairfield said to me about the levy.

Int. 13. State whether you saw and had an interview or not with Mr. Bryant, the former counsel, in those suits at law for Mrs. Burgess.

(Same objection.)

Ans. I did.

Int. 14. Will you state whether you proceeded, and, if so, how far you proceeded, in regard to a review?

(Same objection.)

Ans. I took minutes from my conversation with Mrs. Burgess, and obtained data from Mr. Fairfield, and made a draft of a petition for a review, which I submitted to my father. This petition I am quite sure was never signed, and nothing further was done by me toward obtaining a review.

Int. 15. State whether Mrs. Burgess came to see you again about it, or what more you had to do with it.

(Same objection.)

Ans. Mrs. Burgess was at my office on several days in regard to this matter, and I explained to her the peril in which her real estate then was, and she understood it fully. She desired to know
195 the expense of obtaining a review and the chances of success. I explained to her that it might cost, the entire proceeding, a great deal more than the entire amount of the judgments and costs, and that no lawyer could assure her of success. She desired, in view of the possible expense and uncertainty, to consult with her husband, and mentioned some lawyer in Providence, who, if I remember correctly, was a relative or connection, whose advice she also desired, and she left me finally with the understanding that she would either return shortly and sign the petition, or else settle the case according as she finally determined.

(All that part of the answer specially objected to which refers to conclusions of the witness, as well as the conversation with Mrs. Burgess.)

Int. 16. State whether ever she returned to see you about the same matter.

(Same objection.)

Ans. She did not.

Int. 17. State whether you or your firm have had any correspondence by letter with Mrs. Burgess; and, if so, whether you have any letters purporting to be written or signed by her within your possession or control; and, if so, please produce the same.

(Same objection.)

Ans. I do not remember to have received any letters, but have made no search; there was no firm; as to whether my father may have received letters from her I have no knowledge. His office is in another street.

Cross-examination (*de bene*) by E. P. BROWN, Esq., of counsel for complainant:

Cross-int, 18. Were you summoned here this morning as a witness?

Ans. I was not.

Cross-int. 19. You came voluntarily, did you?

Ans. I did.

Cross-int. 20. Have you received any compensation for the time or trouble you have taken in examining your memoranda to
196 refresh your memory in their matters, or for coming here as a witness?

Ans. None.

Cross-int. 21. When were you first consulted by Mr. Graffam or any of his counsel in this matter?

(Objected to, because the question assumes or implies that witness has been consulted by Mr. Graffam or his counsel.)

Ans. Mr. I. R. Clark called upon me several months ago, about the same time as yourself, to learn what I knew relating to the matters I have here testified to.

Cross-int. 22. Have you any memoranda of the date when you were called upon by complainant's counsel?

Ans. I may have; am not sure, but think it likely.

Cross-int. 23. Did you ever inform complainant's counsel that you had had an interview with Mr. Fairfield in your direct examination?

Ans. I think I did, at my first interview with him.

Cross-int. 24. How many interviews did you have with complainant's counsel?

Ans. I think twice in my office and once—a casual meeting—on the steps of the building, 33 School street.

Cross-int. 25. Didn't you state to complainant's counsel several times that Mrs. Burgess had no knowledge that a levy had been made or was proposed to be made?

Ans. No, sir.

Cross-int. 26. Was Mrs. Burgess accompanied by any person at the time of your interviews with her April 3 and 4, 1879?

Ans. She was.

Cross-int. 27. By whom?

Ans. By a lady companion, I think a young woman, whose presence continually with her Mrs. Burgess explained by saying that she had been unwell, and the excitement of this matter so unnerved her that she dared not trust herself to go about alone. This lady, however, was not present during my consultations and interviews with Mrs. Burgess, which took place in the inner room at my office, and it is my recollection that nothing in relation to the business was said before this lady.

197 Cross-int. 28. Did you not state to the complainant's counsel, at the interviews referred to, that Mrs. Burgess, when she called on you in this matter, was attended during all her interviews by a lady, on account of her very weak condition?

Ans. No, not in that form. I said she had a lady companion with her every time she came to see me, on account of her weak condition.

Cross-int. 29. Did you not state to complainant's counsel that this lady companion with Mrs. Burgess was with her during your entire conversation with Mrs. Burgess?

Ans. No; nothing whatever of the kind.

Cross-int. 30. Why did you not exhibit to complainant's counsel the memoranda which you have referred to in your book?

Ans. I am very certain that I did exhibit them to him, at least the entry of April 3.

Cross-int. 31. Why are you not equally certain that you exhibited to him the entry of April 4?

Ans. Upon reflection I think I did. I feel equally certain of that. The doubt I had about it was for the reason that I thought there was only one date in my ledger; but glancing at it since, I see that both dates are there, and my recollection is that at the time of your first call, and also at the time of Mr. Clark's call, I looked at my ledger to find the date of my first interview with Mrs. Burgess, and that I showed each of you both the entries on my ledger and the journal entries that I have testified to.

Cross-int. 32. Did you not inform complainant's counsel that you had no memoranda of your interview with Mrs. Burgess, but thought it was in the month of April, 1879; that you would search for same, and if you found it would inform him by letter?

Ans. No. I told him that I could not find my minutes, and that I would search for them. But I have never found them. These minutes were a statement in brief of all the facts relating to the matter of the review as I wrote them down from Mrs. Burgess, together with memoranda of dates, amounts, etc., obtained from Mr. Fairfield.

JAMES W. PICKERING.

Attest: HORACE G. ALLEN,
Special Examiner.

198 *Deposition of Peter Graffam.*

Direct examination by A. A. RANNEY, Esq., of counsel for defendants:

AUG. 22, 1881.

Int. 1. State your name, age, residence, and occupation.

Ans. Peter Graffam; thirty-one years; Malden; mason.

Int. 2 (*de bene esse*). Under a claim that the judgments were conclusive on the question of liability, and plaintiff's evidence on that point is incompetent and immaterial, state whether you did the work constituting the claim on which the judgment against the complainant in your case was founded.

Ans. I sent men to do the work. I superintended it and knew that it was done.

Int. 3 (*de bene*). Will you state how well or ill it was done?

Ans. Well, I saw the lady quite a number of times afterwards; she made no complaints to me. I call it well done.

Int. 4 (*de bene*). Did you do the work by contract or by the day?

Ans. By the day.

Int. 5 (*de bene*). State whether the prices which you charged and which you recovered were just and reasonable or not.

Ans. They were, and I told her what the price would be per day.

Int. 6 (*de bene*). How long after the work was done was it before you put the bill into the hands of Mr. Fairfield for suit?

Ans. I should say it was about fifteen or eighteen months, as near as I can recollect.

Int. 7 (*de bene*). What efforts during that interval, which is the interval before you put the claims into Mr. Fairfield's hands, had you made to collect the bill of Mrs. Burgess?

Ans. I called on her and presented the bill. She found no fault with it, except some lime or mortar, I forget which, that she ought not to pay for, and which I was willing to deduct. She told me that she would have some money for me as soon as she went to Boston. She told me when to call. I called at the stated time. She still promised me at a future day several times. I called at the times set and she still promised me. I kept calling until I got tired of
199 it, and I put the bill into Mr. George Smith's hands. I think that is the first I heard of the work not being done well. That is all.

Int. 8 (*de bene*). How long was that after the time when the work was done?

Ans. I think I waited about fifteen or eighteen months. I cannot tell the exact time.

Int. 9 (*de bene*). And about how many times did you see her during that interval?

Ans. I should say—I can't give the exact number—about ten or twelve times—quite a number of times.

Int. 10 (*de bene*). You say that after you put the claim into the hands of Mr. Smith she began to complain of the character of the work; if you saw him after that, and before you put the claim into the hands of Mr. Fairfield, and had interviews with her in relation

to the work, state what you and she said and what you did about it, if anything.

Ans. I did, at the house in Melrose. I took a carpenter from Malden and went up and saw Mrs. Burgess. He examined the leaks; told her where he thought they were. I told her she could choose a man; if they could not agree they could choose a third one, and whatever they said in regard to the work I would abide by. So she said she would and notify me, but she did not, and I got no notice at all.

Int. 11 (*de bene*). State whether you did or did not send a man to examine the work after her complaint to see whether your work was in fault.

Ans. No one but this carpenter.

Int. 12 (*de bene*). What did you find in reference to where the leaks were, and what caused them?

Ans. We found that the saddle-board was split badly, and the deals on the gable end of the house were split, looking from the attic window.

Int. 13 (*de bene*). Was that from any defect, or did it arise any from the part of the work that you did?

Ans. The carpenter thought it was not my fault.

Int. 14 (*de bene*). What was the work which you did; mason or carpenter work?

200 Ans. Mason work and whitening.

Int. 15. State whether, at the time your case came on for trial against Mrs. Burgess, you were present with your witnesses, prepared to substantiate your claim.

Ans. I was.

Int. 16. After you obtained judgment, and before the levy and sale of the house attached, did Mrs. Burgess come near you, or take any steps, to your knowledge, toward satisfying the judgment in your suit?

Ans. She did not, to my knowledge.

Int. 17. After you obtained judgment did you attend personally to the levy and execution of the sale, or leave it to your counsel and the sheriff?

Ans. I was there at the sale; the rest I left to my counsel.

Int. 18. Did you have anything to do or say in regard to what notices should be given, or what was left to the officer?

Ans. I did not; that was left to my counsel.

Int. 19. State whether you did anything to conceal the fact that the levy had been made, the property advertised for sale, or that the sale had been made and you purchased it, either before or after the sale or purchase.

Ans. I made no secret of it; I did nothing to conceal the fact.

Int. 20. Will you state whether you said anything to Mrs. Burgess about it yourself in any interview with her after the sale had taken place; if so, when; what did you say to her and where?

Ans. Mr. Fairfield and I; I took Mr. Fairfield in my team and drove to Melrose; left my horse in charge of Mr. Fairfield; saw Mrs. Burgess at the back door; was invited to the front door. I

told her that the property had been sold and I had bought it; asked her to settle the case, as I did not desire to have it go any further. She told me she had brought no suit and had nothing to say. I told her that if that was the way she felt I had no more to say. That is all.

Int. 21. Did the conversation occur at the back door, or where? State how this was.

Ans. I tried to have the talk with her at the back door, because there was a gentleman there to work, and I wished to have
201 him hear it. I went, as she told me to go, to the front door, and told me that no gentleman would call to see a lady at the back door. I then said to her what I have stated.

Int. 22. State when this interview was.

Ans. I cannot tell exactly; it was before the year expired. It was after I bought the place.

Int. 23. When you say before the year had expired, what year do you refer to?

Ans. From the time of the sale—after the sale—and before the year had expired which she had to redeem it.

Int. 24. State whether you had then taken actual possession of the house.

Ans. I had not taken possession.

Int. 25. Will you state whether you did subsequently take actual possession of the house, and what you did in that regard, and for that purpose?

Ans. I drove up to Melrose, met Mr. Fairfield and another gentleman, whose name has gone from me now, took them into my carriage and drove to the house. I entered the house—we entered the house—and employed teams for the removal of the goods.

Int. 26. Will you state whether at the time of taking possession of the house and removal of the goods there was any one present in the occupancy of the house?

Ans. No one, to my knowledge, was there.

Int. 27. State whether in the removal of the goods any injury was done to them.

Ans. There was no damage, to my knowledge.

Int. 28. State what sort of men you employed to remove the goods, whether men accustomed to that sort of business or otherwise.

Ans. That was his business, moving goods, and he had teams for that purpose.

Int. 29. When the goods were removed where were they put?

Ans. Into a building near the post office. I hired it of the expressman for that purpose.

Int. 30. What sort of a place was it as to being suitable or otherwise for the storage of such goods?

202 Ans. I think the lower part of the building was used as a wagon house. I think the goods were put in the second story. I think they were suitable; I should be willing to have my goods put there.

Int. 31. After you took possession of the house as stated, and up

to the time when the deed was given to Doble, what did you do, if anything, to hold possession of the house?

Ans. I had keepers there.

Int. 32. During that time did you see or say anything to Mrs. Burgess about having removed the goods?

Ans. I don't recollect of seeing her.

Int. 33. Do you know anything about notice being given her of the fact of the removal by your counsel?

Ans. I think he told me that he notified Mr. Lynde, her counsel, at the time that it was moved, and was at her disposal.

Int. 34. During this time, where were you living or doing business?

Ans. In Malden.

Int. 35. Was this house in Malden or Melrose?

Ans. Melrose.

Int. 36. How near was the house to where you lived or did business?

Ans. I believe they call it two miles.

Int. 37. Do you know whether the fact of the house having been advertised and sold was known in Malden and Melrose; and, if so, how generally and extensively?

(Question objected to as incompetent.)

Ans. I know that I told several of the fact. I think it was advertised in the Melrose paper; am not sure.

Cross-examination (*de bene*) by E. P. BROWN, Esq., of counsel for defendants:

Cross-int. 38. Can you fix more definitely when, as you say, you and Mr. Fairchild visited Mrs. Burgess's place at Melrose?

Ans. I cannot state. I have no minute of the time.

Cross-int. 39. Was any of the conversation which you say
203 you had with Mrs. Burgess at the back door, or was it all at the front door?

Ans. I had no talk with her at the back door; all at the front door.

Cross-int. 40. At the time when, as you say, the conversation took place between you and Mrs. Burgess, were there any persons making repairs at the place? Were any of the walks taken up and in process of repair?

Ans. I am not sure about the walks being taken up. I think there were repairs being made on the house; am not positive.

Cross-int. 41. Do you mean to testify that the interview which you testify you had with Mrs. Burgess did not take place in the month of June, 1880?

Ans. I cannot tell you. I cannot give you any of the dates or months. I only know that it was between the time of the sale of the place and before the year had expired which she had to redeem.

Cross-int. 42. Did you ever have more than one interview with

Mrs. Burgess when Mr. Fairfield went with you, as stated in your direct examination?

Ans. Only one to my knowledge, and then Mr. Fairfield was in my carriage in the street.

Cross-int. 43. Which street?

Ans. The house is on the corner of Emerson and Myrtle streets, I think, and the carriage on the street leading across the street leading to the depot.

Cross-int. 44. Before you took possession of the house on the twenty-second day of June, 1880, you knew that Mrs. Burgess was occupying it and had been occupying it for some days as a summer residence, did you not?

Ans. I knew that there was some one living in the house, and also knew that there was repairs going on.

Cross-int. 45. Will you now answer the interrogatory, and tell me whether you knew that Mrs. Burgess was stopping there?

Ans. I knew that she was there at the time I saw her at the back door.

Cross-int. 46. Why didn't you go and take possession while
204 you knew the house was occupied, instead of waiting until you knew the house was unoccupied?

Ans. I was very busy at the time. I was waiting for a time when I could go without my business suffering or neglecting my business. I had one day, and I asked Mr. Fairfield if he could go with me. I think he told me he had a case to attend to that day in court.

Cross-int. 47. What time was it on the 22d of June that you telegraphed to Mr. Fairfield to come to Melrose that afternoon?

(Objected to because it assumes that witness did telegraph.)

Ans. I cannot give the hour, and don't remember.

Cross-int. 48. Please give the substance of the telegram which you sent.

(Objected to as incompetent.)

Ans. Don't remember.

Cross-int. 49. Did your telegram to Mr. Fairfield request him to bring a man with him from Boston to assist?

Ans. Do not remember. I made no note of any of it, or of any of the words used.

Cross-int. 50. From what telegraph office, whether in Melrose or Malden, was the telegram sent?

Ans. Not positive which office.

Cross-int. 51. To what address in Boston was the telegram to Mr. Fairfield directed?

Ans. If I sent him a telegram it must have been to his office. I have no recollection of ever sending him one; perhaps I did.

Direct examination resumed:

Int. 52. Mr. Graffam, the deed which you gave to Mr. Doble

finally, was that deed altered before it was executed so as to run to Mr. Doble instead of to Mr. N. L. Graffam?

Ans. All changes had been made before I signed it.

PETER GRAFFAM.

Attest: HORACE G. ALLEN,
Special Examiner.

205 *Deposition of L. T. Freeman.*

Direct examination by A. A. RANNEY, Esq., of counsel for defendants:

BOSTON, *Aug.* 23, 1881.

Int. 1. State your name, age, residence, and occupation.

Ans. My name is L. T. Freeman; am forty-six years old; Melrose; and am furniture mover.

Int. 2. State how long you have been engaged in that business.

Ans. About eight years there, and have worked for other people in the business for years.

Int. 3 (*de bene*). State whether, at the request of Peter Graffam, you removed the goods or furniture of Mrs. Burgess from her house at Melrose, June, 1880.

Ans. Yes, sir.

Int. 4 (*de bene*). Will you state whether you were personally present and took part in the same?

Ans. I superintended the removal of the goods.

Int. 5 (*de bene*). How many men did you have?

Ans. Two beside myself.

Int. 6 (*de bene*). State whether the men you had to do it were green hands or men accustomed to do that kind of business.

Ans. They were both used to the business—both of them.

Int. 7 (*de bene*). Where did you remove the goods to?

Ans. I moved them into Eastman's storehouse on Essex street.

Int. 8 (*de bene*). What sort of a place was it where you left them?

Ans. It was a stable chamber, and where furniture has been stored for the last number of years, I can't tell you how many.

Int. 9 (*de bene*). State how it was in regard to being a dry, clean, suitable place or not.

Ans. It was dry, all that I see; it was a clean place when I went into it, but not plastered. I have taken furniture out of there that had been there a short time—six months. I couldn't tell you anything about the suitable part of it. The furniture I took out was all right.

206 Int. 10 (*de bene*). State whether the furniture, or any part of it, in the removal and storing of it, when you left it was injured or damaged.

Ans. No, sir; everything was the same as I took it from the house.

Int. 11 (*de bene*). State what pains or care was taken in the removal of the goods.

Ans. I took the goods and set them all over the place single, and then went to work and repacked them all over. I didn't take up

the carpets; they were up. I folded them. I took nothing down; everything was loose when I went there, curtains and all.

Int. 12 (*de bene*). Do you mean that the carpets were all up when you went into the house?

Ans. Yes, sir; I just took them up and folded them. The tacks were all out.

Int. 13 (*de bene*). State whether in the removal of the goods you did any damage to the house.

Ans. Not any that I could see. We didn't do no damage. I never rubbed anybody's paper or furniture.

Cross-examination (*de bene*) by E. P. BROWN, Esq., of counsel for complainant.

Cross-int. 14. What did you do with the lace curtains which were in the house?

Ans. I put them with the furniture.

Cross-int. 15. Have you seen the furniture since you put it in the place referred to?

Ans. No, sir; I have not.

Cross-int. 16. Were the tacks taken out of the carpets or the lace curtains taken down when you arrived at the house?

Ans. I couldn't say as to that. I couldn't say whether they were or not.

Cross-int. 17 Please give the names of the two men whom you say you employed to assist you.

Ans. One of them is named Wm. Hallahan and the other Henry Eliot.

Cross-int. 18. Give the names of all persons who assisted in
207 moving the furniture or taking it out of the house, so far as you have not now mentioned them.

Ans. There was three keepers there. I couldn't tell their names. I don't know as they took anything out of the house, or took anything down. I couldn't say.

Cross-int. 19. Who employed you to go there?

Ans. Peter Graffam.

Cross-int. 20. How long before you went to the place was it that Peter Graffam called on you and told you that he wanted your assistance?

Ans. I was coming up Essex street, and I met a man on the same day. I didn't know who he was or where the goods were. It might have taken me thirty minutes to get my teams.

Cross-int. 21 Who told you where to put the goods?

Ans. Mr. Peter Graffam.

L. T. FREEMAN.

Attest: HORACE G. ALLEN,
Special Examiner.

Deposition of Edward Newhall.

Direct examination by A. A. RANNEY, Esq., of counsel for defendants:

AUG. 23, 1881.

Int. 1. What is your name, age, residence, and occupation?

Ans. Edward B. Newhall; fifty-three years; Malden; real estate.

Int. 2. Please state whether you were the plaintiff in the suit against Mrs. Burgess, the complainant here, being the suit of Newhall *v.* Mrs. Burgess, in question in this suit.

Ans. Yes, sir.

Int. 3 (*de bene*). State whether at the time the suit was brought Mrs. Burgess was owing you.

Ans. Yes, sir.

Int. 4 (*de bene*). How long had it existed before you sued it, and what efforts had you made to collect it?

Ans. The first time I worked for her was 1873 and 1874. I did not do a great deal for her in 1874. I think very near six
208 years; she had a number of bills of the work, *i. e.*, she had a number sent her, and always got everything except them. I went down to Mr. Conant on State street. He said he could get it for us, but he didn't do anything about it.

Int. 5 (*de bene*). Did you ever before suit see her personally about it?

Ans. I think Mr. Lovering saw her. She always kept out of the way after that. She was very friendly before, and came in nearly every day when she was this way, but I don't think I did see her.

Int. 6 (*de bene*). How did you send your bills to her?

Ans. Through the mails, sir.

Int. 7 (*de bene*). How directed?

Ans. Directed to Mrs. Burgess—I don't recollect the initials now—Providence, Rhode Island. The leases were made and sent to her there, and she came on and brought them and signed them here.

Int. 8 (*de bene*). Did you put the initials on the letters at the time you sent them?

Ans. O, yes, sir.

Int. 9 (*de bene*). Had you, before sending these bills, had correspondence with her?

Ans. Yes, sir; most of it was done in the office. She used to come nearly every day.

Int. 10 (*de bene*). Had your previous letters to her on business directed to Providence been answered?

Ans. Yes, sir.

Int. 11 (*de bene*). Was there any difference in the way you directed the letters in which you sent your bills and the other letters which you had previously sent her?

Ans. No, sir; I guess she got a bill at the same time the work was finished.

Int. 12 (*de bene*). Did the letters in which you enclosed the bills to her ever come back through the dead-letter office?

Ans. No, sir.

Int. 13 (*de bene*). What was the nature of the services which you rendered Mrs. Burgess and formed the subject-matter of your suit?

209 Ans. Letting and the general care of the property, gathering apples, etc., making leases.

Int. 14 (*de bene*). How often during the time you were rendering these services did you see her personally?

Ans. In the fall I used to see her very often; in winter didn't see her so often until towards spring, and then I used to see her often again.

Int. 15 (*de bene*). State how well you knew her and how well she knew you.

Ans. I had known her a good while before this transaction. She knew me very well until this transaction was over, and then she didn't know much about me. When she first came into the office I was not there; my partner was there. She inquired about buying this particular estate, and my partner, not knowing who he was talking to, told her that she didn't want anything to do with that estate, as it belonged to a party known as "Fighting Perkins." Finally she said, "I am Mrs. Burgess, who owns that property, and you are just the man I want to look after it."

Int. 16 (*de bene*). How many times after that, or about how many times, did you see her and have interviews with her in relation to her business?

Ans. It might have been twenty times or ten. A good many times; in and out quite often.

Int. 17 (*de bene*). Have you now in your possession any papers written by her or signed by her?

Ans. I don't know whether I have or not.

Int. 18 (*de bene*). Will you please state whether, after you brought your suit against Mrs. Burgess, you saw or had any interviews with Mrs. Burgess about it?

Ans. I did; she wanted to settle. I referred her to counsel. I had nothing further to say about it whatever.

Int. 19 (*de bene*). How long was that after suit was brought?

Ans. I think it was a few days or a week.

Int. 20 (*de bene*). After the property was sold and bid off by you, did you see her or have any interview with her?

Ans. No.

Int. 21. Have you any leases signed by Mrs. Burgess?

Ans. No, sir; I haven't.

210 Cross-examination (*de bene*) by E. P. Brown, Esq., of counsel for complainant:

Cross-int. 22. Referring to page 35 of the printed records to the account annexed to the declaration in your suit against Mrs. Burgess, dated June 4, 1874, will you please state whether that is the correct date when you leased the property for Mrs. Burgess, as set forth in said account?

Ans. I think it is, sir; not far from that time.

Cross-int. 23. To whom did you lease the property?

Ans. Bostein, I think his name was; I can't remember exactly; some such name as that.

Cross-int. 24. Was it Bornstein?

Ans. It might have been; it was a clothing man—a Jew clothing dealer, who occupied it the year before.

Cross-int. 25. At what rent did you rent the house?

Ans. I think it was $600; *i. e.*, $100 a month for a certain number of months; I don't remember how many.

Cross-int. 26. What was your commission for the renting?

Ans. Twenty-five dollars.

Cross-int. 27. What did you do with the apples which you say you gathered for Mrs. Burgess?

Ans. They were put into the basement kitchen or wash-room, and stayed there till they were all froze; never taken away.

Cross-int. 28. What was the full name of Mr. Lovering, whom you say was your partner in 1874?

Ans. Luke W. Lovering.

Cross-int. 29. Was it in the year 1874 that you gathered the apples, as you say, and put them into the wash-room or cellar?

Ans. No, sir; it was in 1873.

E. B. NEWHALL.

Attest: HORACE G. ALLEN,
Special Examiner.

211 *Deposition of Benjamin F. Bayley.*

Direct examination by A. A. RANNEY, Esq., of counsel for defendants:

BOSTON, *Sept.* 7, 1881.

Int. 1. State your name, age, residence, and business, and, if a deputy sheriff, how long.

Ans. Benjamin F. Bayley; sixty-six years old; Boston; thirty-six years and a half a deputy sheriff.

Int. 2. State whether you were acting as a deputy sheriff with Watson Freeman.

(This and all following interrogatories to the witness objected to as incompetent and immaterial.)

Ans. I was.

Int. 3. State whether, as a deputy sheriff, you have been cognizant of sales of real estate on execution.

Ans. I have.

Int. 4. Will you state when and in what place it has been customary to make sales of real estate sold on execution?

Ans. In the county of Suffolk, always at the officer's office, for as long back as I can remember.

Int. 5. Whether it has been customary or usual with sheriffs or officers, when they make a sale of land on execution, to hang out a flag?

Ans. So far as I know, it is not.

Int. 6. You have spoken of what is customary in Suffolk county in the two respects named; do you know of there being a different custom or usage in other counties?

Ans. 6. I do not.

Int. 7. So far as you know, is the custom or usage in these particulars the same in other counties, or different?

Ans. So far as I know, it is the same.

Cross-examination waived.

BENJAMIN F. BAYLEY.

Attest: HORACE G. ALLEN,
Special Examiner.

212 *Deposition of William C. Dillingham.*

Direct examination by A. A. RANNEY, Esq., of counsel for defendants:

BOSTON, *Sept.* 7, 1881.

Int. 1. What is your name, age, residence, and occupation?

Ans. William C. Dillingham; thirty-three years; deputy sheriff; Everett.

Int. 2. How long have you been deputy sheriff in Massachusetts?

Ans. Six or seven years.

Int. 3. State where it has been usual or customary among deputy sheriffs in Middlesex county to make sales of land on execution.

Ans. Usually at their offices.

Int. 4. Where have you been accustomed to make them?

Ans. At my office in Malden, and before I had that at my dwelling-house.

Int. 5. Whether it has ever been customary or usual for deputy sheriffs, when they make sales of land on execution, to hang out or use a flag?

Ans. In all of my experience as a deputy sheriff, and as a clerk of a deputy sheriff, which covers eighteen years, I never knew of a flag being hung out on a sale of land on execution.

Int. 6. If you are the sheriff who sold the house of Mrs. Burgess on execution, in the suit of Peter Graffam, in question in this suit, please state whether or not, besides the notice of the sale stated in your return, you sent any notice of the sale to Mrs. Burgess. If so, what did you do in that regard? And, if so, produce the notice or copy.

Ans. I sent her a copy by mail. I have a copy and produce it, marked "G, H. G. A."

Int. 7. If you say you sent a copy of the notice as advertised and printed in the Malden Mirror to her by mail, please state in what you enclosed the same.

Ans. In an envelope.

213 Int. 8. If in an envelope, how addressed; and how did you get her address?

Ans. Addressed to her at Providence, R. I. I think I had her address, but am not positive.

Int. 9. Was the postage paid or not?

Ans. It was.

Int. 10. Did the letter ever come back to you through the dead-letter office?

Ans. Never.

Int. 11. Where did you post the notices referred to in your return?

Ans. I think it was in the Boston & Maine station, in Malden, and in the post office in Melrose, and the post office in Wakefield, and it may have been in both railroad station and post office in each place, as I frequently did that.

Cross-examination by E. P. BROWN, Esq., of counsel for complainant:

Cross-int. 12. Have you not stated to one or two persons that you never gave any notice to Mrs. Burgess except that required by law?

Ans. I think it is quite likely, as I do not consider notice sent in this way as a legal notice.

WM. C. DILLINGHAM.

Attest: HORACE G. ALLEN,
Special Examiner.

EXHIBIT G. H. G. A., *Examiner.*

Malden Mirror.

Sheriff's Sale.

MIDDLESEX, *ss:*

APRIL 4, 1879.

Taken on execution, and will be sold by public auction, on Saturday, the seventeenth day of May next, at ten o'clock a. m., at my office in Hill's Building, so called, on Main street, in Malden, in said county, all the right, title, and interest that Christina J. Burgess, of Providence, in the county of Providence and State of Rhode
214 Island, had liable to be taken on execution on the twenty-fourth day of January, 1879, at eleven o'clock and twenty minutes a. m., being the time the same was attached on mesne process, or that she has at any time since had in and to the following-described real estate, to wit, a certain piece or parcel of land, with the buildings thereon, situated in Melrose, in said county of Middlesex, and bounded and described as follows, viz: Beginning at the junction of Emerson and Myrtle streets, and thence running south 76° east one hundred and twelve feet on said Emerson street; thence south 19° west one hundred and seventy feet on land now or formerly of John Shelton; thence north 76° west one hundred and twenty-one feet and eight inches to said Myrtle street; thence northerly by said Myrtle street one hundred and seventy feet to the point of beginning, containing about 19,850 square feet, more or less.

WILLIAM C. DILLINGHAM,
Deputy Sheriff.

Stipulation.

It is mutually agreed that the papers and records, copies of which are annexed to the defendants' answers, and which appear in the printed record of this case, on pages twenty-one (21) to twenty-nine (29), inclusive, and on page twenty-four (24) to page thirty-nine (39), inclusive, together with the officer's return on the execution in the case of Mr. Newhall, copy of which is found in the record of this case as printed on pages one hundred and nineteen (119) to page one hundred twenty-one (121), inclusive, were put in evidence by the defendants with the dates and figures therein appearing, and that the same may be referred and used as evidence without again being printed and copied into the record of this case.

Also that the deeds, Exhibit A and Exhibit B, annexed to plaintiff's bill, and found on the printed record of this case on pages eleven (11) to fifteen (15), inclusive, were put in evidence by the defendants with the dates and figures in said copies appearing, and said copies may be referred to as evidence, the same as if again copied and appearing in the record of this case.

It is agreed, however, that the items and figures beginning
215 with the word "Dam. 33.41" and ending "$81.21," copied in this record as if a part of the execution itself, are upon the margin or back thereof, and put on by the sheriff, except "Dam. 33.41, costs 15.55," as the figures showing his fees and charges.

E. P. BROWN,
For Complainant.
A. A. RANNEY,
For Defendants.

Evidence for Complainant in Reply, taken Pursuant to the Sixty-seventh Rule of the Supreme Court of the United States, in Equity, as amended, before me, Arthur B. Clapp, Special Examiner.

BOSTON, *Sept.* 29, 1881.

Present: E. P. Brown, Esq., of counsel for complainant; N. L. Graffam, Esq., of counsel for defendants.

Deposition of Frank R. Upham.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

Int. 1. What is your name, age, residence, and occupation?

Ans. Frank R. Upham; age, twenty-eight; residence, Melrose, Mass.; occupation, wood and coal and jobbing.

Int. 2. Do you know the complainant?

Ans. Yes, sir.

Int. 3. Are you acquainted with the respondent, Peter Graffam, and do you know him by sight; and, if yea, how well?

Ans. I am not acquainted, but know him by sight by having him pointed out to me, and seeing him on his team with his name on it.

Int. 4. Did you do any work for complainant, Christina J. Burgess, during the year 1880; and, if so, what?

216 Ans. I did; it consisted of hauling gravel.

Int. 5. For what purpose was the gravel hauled, when did you commence to haul, and when did you leave off?

Ans. The gravel was hauled for filling in the yard. I hauled the first the 28th of May, and the last the 2d of June, 1880, so far as my book shows, and I suppose that is correct.

Int. 6. When you commenced to haul the gravel for filling the yard, as you say, had any work been done by way of grading the grounds around the house of Mrs. Burgess, in Melrose?

Ans. I think not.

Int. 7. Was the hauling of the gravel by you the first work that was done towards the grading of the grounds of Mrs. Burgess at the time referred to in 1880?

Ans. I think it was.

Int. 8. Are you acquainted with Christian L. Hoffman, of Melrose?

Ans. I am; but have always heard him called Christopher Hoffman.

Int. 9. Did he work for Mrs. Burgess at any time when you were engaged in filling the yard, as you have already testified?

Ans. Yes; he did.

Int. 10. When, with relation to the time when you left off doing work for Mrs. Burgess, did Hoffman commence, according to your recollection?

Ans. The last day that I was hauling he commenced.

Int. 11. During the time you were at work for Mrs. Burgess, as you have stated, did you see Peter Graffam in or about the premises at any time?

Ans. No, sir; I did not.

Int. 12. While you were engaged in filling the yard, as stated, were you in position where you could have seen Peter Graffam if he had come to the house, by driving to it in horse and carriage, and stopping either on Myrtle or Emerson streets?

Ans. In hauling my gravel I had to go half a mile for it; and any one could drive up while I was away without my seeing them, but while I was there I should have seen any one who came.

Int. 13. Was there any carpenter at work on Mrs. Burgess'
217 house, or about it on the premises, during the time you were hauling gravel?

Ans. There was; the whole of the time, I think.

Cross-examination by N. L. GRAFFAM, Esq., of counsel for defendants:

Cross-int. 14. Where did you first see Mr. Peter Graffam to know him?

Ans. I couldn't say.

Cross-int. 15. When was he first pointed out to you as Peter Graffam?

Ans. I couldn't tell; I have no means of remembering.

Cross-int. 16. Then Peter Graffam may have come on to the

premises described in complainant's bill while you were at work on same, and you not know him, may he not?

Ans. No, sir; because I have known him for more than two years.

Cross-int. 17. When were you first employed to do work on the premises described in complainant's bill?

Ans. I hauled the first gravel there 28th of May, 1880. I had previously done some jobs for Mrs. Burgess, but not in connection with the place.

Cross-int. 18. Were any of these odd jobs done in the spring of 1880?

Ans. I believe they were.

Cross-int. 19. What were these jobs?

Ans. Pumping water and carting same to depot. I think it went there.

Cross-int. 20. During the spring of 1880 had any work been done on said premises—grading walks, repairing piazzas?

Ans. I think not previous to my hauling gravel.

Cross-int. 21. Are you able to swear positively that no work was done prior to May 28, 1880, on said premises?

Ans. I couldn't swear to it. If there had been any done I think I should have seen it, excepting, I think, the carpenter was at work on the division fence the first day I hauled gravel. There might have been work done, but I saw no signs of it.

218 Cross-int. 22. Was the piazza newly floored prior to 28th of May, 1880?

Ans. I think not.

Cross-int. 23. Are you able to swear positively that no work had been done on the premises, in the way of fixing the piazzas and making repairs, prior to 28th of May, 1880, the time you say you were first employed by Mrs. Burgess? Answer yes or no.

Ans. No.

Cross-int. 24. How long have you lived in Melrose?

Ans. Twenty-eight years, with the exception of about five years, when I have been in other places.

Cross-int. 25. Do you have occasion to pass by frequently the premises described in the complainant's bill?

Ans. Yes.

Cross-int. 26. Did you pass by said premises any time during the month of April or May, in 1880, as you recollect? And, if so, state about how frequently.

Ans. I don't suppose there has been a week in the last two or three years but I have passed by there, sometimes two or three times a day, sometimes two or three times a week.

Cross-int. 27. Who did the repairing on the premises, such as repairing piazzas, grading walks, etc., if you know, during the spring of 1880? Give the names of any person working there.

Ans. The carpenter's name I never knew; he said he came from Providence. Thomas Hawkins, Thomas Duffy, Christian L. Hoffman, and others whose names I do not recollect.

Cross-int. 28. What time during the spring of 1880 were these

men employed to make repairs on the premises described in the complainant's bill?

Ans. Last of May and first of June, covering about five days, as far as I know.

Cross-int. 29. Did you have any conversation with these men about the work done for Mrs. Burgess?

Ans. Yes, some.

Cross-int. 30. And will you swear that none of these were employed prior to the 28th of May, 1880, by Mrs. Burgess, or any one in her behalf, to make these repairs?

219 Ans. No, sir; I had no means of knowing. There had been no grading done when I went there, so far as I could see.

Cross-int. 31. And you cannot now swear that there had not been any repairing done on the premises named in complainant's bill prior to your hauling said gravel on the 28th of May, 1880?

Ans. No, sir.

Cross-int. 32. Do you keep any books of account?

Ans. Yes, sir.

Cross-int. 33. Have you those books here?

Ans. Yes, sir.

Cross-int. 34. Will you swear positively that the hauling of the gravel by you, referred to in Int. 7 in your direct examination, was the first work done toward grading the grounds of the premises described in the complainant's bill?

Ans. According to the best of my recollection, it was.

Cross-int. 35. You cannot then swear positively that the hauling of the gravel by you was the first work done of this kind?

Ans. I should be safe enough to swear to that. I could see no signs of anything being done, and I know the first gravel hauled was on to the walk to the back door. I am quite positive it was the first work of the kind.

FRANK R. UPHAM.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of Christian L. Hoffman.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Sept.* 29, 1881.

Int. 1. What is your name, age, residence, and occupation?

Ans. Christian L. Hoffman; age, forty-eight; residence, Melrose; laborer on concrete pavement.

Int. 2. Did you work for Mrs. Burgess, the complainant, in 1880?

Ans. I did, sir.

220 Int. 3. When did you commence to work for her in 1880, and when did you leave off?

Ans. I couldn't tell exactly; I think it was the first week in June. I think I worked about five or six days.

Int. 4. Do you know Mr. Frank R. Upham, the witness who has just testified in this case?

Ans. Yes, sir.

Int. 5. Did Mr. Upham work for Mrs. Burgess in the spring of 1880, at the time when you worked for her, as you have now stated?

Ans. Yes, sir.

Int. 6. Did he leave off working for her before you finished your work, or did he work during the time you were engaged?

Ans. He finished his job before I began, but I wanted some more gravel and he brought it.

Int. 7. Were the grounds about Mrs. Burgess's house graded or worked upon by any other persons, except yourself and Mr. Upham, and persons employed by you, during the spring of 1880?

Ans. Mr. Hawkins and Mr. Duffy were there.

Int. 8. Do you know Peter Graffam, of Malden?

Ans. Yes, sir.

Int. 9. During the time you were engaged in grading the grounds, laying out walks, did you see Peter Graffam upon or about the premises?

Ans. No, sir.

Int. 10. Were you continuously upon the grounds of Mrs. Burgess, during working hours, while you were engaged in doing the work in grading and laying out the yard?

Ans. No, sir.

Int. 11. How much of the time were you upon the grounds?

Ans. All the time, except one afternoon.

Cross-examination by N. L. GRAFFAM, Esq., of counsel for defendants:

Cross-int. 12. In what part of Melrose do you live?

Ans. Western part.

Cross-int. 13. You say you worked for Mrs. Burgess some
221 time in the year 1880; will you state at what time in the year 1880 you were employed by Mrs. Burgess?

Ans. I could not tell exactly, but think it was the first week in June; might have been second or third day.

Cross-int. 14. Will your swear positively that it was the first week of June, 1880, that you were first employed by Mrs. Burgess?

Ans. Yes, sir.

Cross-int. 15. What were you employed to do?

Ans. Laying out and grading her place.

Cross-int. 16. Had any work been done on the premises, laying out and grading walks, repairing piazzas, and other work, prior to your going there?

Ans. Yes, sir.

Cross-int. 17. Will you state what that work was, and what had been done?

Ans. There was some alteration on the grounds, some carpenter work, some fences; think there was some work done in the house.

Cross-int. 18. Had any work been done on piazza in spring of 1880, prior to your going there?

Ans. Yes, sir; carpenter and tin work.

Cross-int. 19. State what kind of repairs had been made on the piazza or on the premises, as near as you can, prior to your going there.

Ans. I think the posts were rotted away; the carpenter put new posts under it. The tinman also worked on it.

Cross-int. 20. State who was employed, if you know, to do this work.

Ans. I couldn't tell. I think the carpenter lives in Providence. I know the man, but do not know his name.

Cross-int. 21. About what time in the spring of 1880 was this work done referred to in Int. 19?

Ans. The fence was up before I came; some of repairs were done before I came and some while I was there—in May and June.

Cross-int. 22. Will you swear it was not in the month of April?

Ans. May have been some done, and I know nothing about it.

Cross-int. 23. Did you pass by the premises during the month of April, 1880, as you recollect now?

222 Ans. I did.

Cross-int. 24. Did you see parties working on the premises at that time?

Ans. I couldn't remember.

Cross-int. 25. Would you swear you did not?

Ans. No; I wouldn't.

Cross-int. 26. Then you can't swear that this work was not done some time in the month of April or the first part of the month of May?

Ans. No.

Cross-int. 27. How long have you known Frank R. Upham, the witness who has previously testified here?

Ans. I think about twelve or thirteen years.

Cross-int. 28. Did you see Mr. Upham hauling any gravel on the premises described in the complainant's bill?

Ans. Yes, sir.

Cross-int. 29. At what time in the spring of 1880, if it was in the spring, did you see Upham hauling gravel?

Ans. I think it was the first week in June.

Cross-int. 30. Did you see him hauling any gravel prior to the first week in June and depositing the same on said premises?

Ans. I did.

Cross-int. 31. Did you see him hauling any gravel during the month of April, 1880, and depositing the same on the premises?

Ans. No; I did not.

Cross-int. 32. When did you first see him hauling gravel on said premises?

Ans. I think it was about a week before I started to work there.

Cross-int. 33. Do you know whether any other person had hauled and deposited gravel on said premises other than Mr. Upham?

Ans. Yes, sir.

Cross-int. 34. Will you state who?

Ans. Mr. Ellis. I hired him; I furnished the gravel.

Cross-int. 35. Did Mr. Upham get his gravel from you to grade the walks on the premises?

Ans. No, sir.

223 Cross-int. 36. At what time in spring of 1880 did you furnish the gravel to Ellis to grade the walks and grounds on said premises?

Ans. In June.

Cross-int. 37. During the spring of 1880 did you see any other parties hauling any gravel and depositing the same on the premises?

Ans. No, sir.

Cross-int. 38. Were you on the premises described in the complainant's bill any time during the months of April or May, 1880?

Ans. I was; in May.

Cross-int. 39. State whether the first or latter part of May.

Ans. I couldn't tell exactly now.

Cross-int. 40. Have you at any time ever seen Peter Graffam on the premises; if so, when?

Ans. No, sir.

Cross-int. 41. Did you see any men employed working on the premises either in April or the first part of May in the spring of 1880?

Ans. The carpenter was working a good while before I came; I couldn't tell how long.

Cross-int. 42. Were these walks, grading, and repairs on piazzas being done about this time?

Ans. Yes; they were all done in the same time.

Direct examination resumed:

Int. 43. Please examine this receipt and tell me if that is your signature.

Ans. Yes, sir.

(Said receipt offered in evidence and marked "Exhibit Hoffman, A. B. C., Special Examiner.")

Int. 44. Is that the receipt you gave Mrs. Burgess when you concluded your work on her premises in 1880?

Ans. Yes, sir.

Cross-examination resumed:

Cross-int. 45. Do you keep any books of account?

Ans. Yes; I did.

Cross-int. 46. Have you those books with you?

224 Ans. No, sir.

Cross-int. 47. Will you produce and have them here for examination?

Ans. No, sir.

(Defendants' counsel here gives notice to complainant's counsel to produce the books kept by witness at that time, giving his account for services for complainant.)

Direct examination resumed:

Int. 48. Have you not already stated, in presence of respondents' counsel, that your books covering these transactions have been destroyed?

Ans. Yes, sir.

Int. 49. When and how were they destroyed?

Ans. I keep a little day-book for a year, and when I am through with it the children take it, rip out leaves and use the blank ones.

Int. 50. This book you gave to your children and have not seen it since, is that correct?

Ans. I asked her last night; she said she had it at school-house. She had ripped out the leaves. I did not give it to her; she took it.

CHRISTIAN L. HOFFMAN.

Attest: ARTHUR B. CLAPP,
Special Examiner.

EXHIBIT HOFFMAN. A. B. C., *Special Examiner.*

MELROSE, *Jan.* 7.

Receive- of Mrs. C. J. Burgess forty-seven dollers, in ful- for labor.

C. L. HOFFMAN.

Deposition of Elizabeth Conant.

Direct examination by E. P. BROWN, Esq., of counsel for complainant (*de bene*):

BOSTON, *Sept.* 29, 1881.

Int. 1. What is your name, age, and residence?

Ans. Elizabeth Conant; age, forty-seven; Melrose.

225 Int. 2. Are you the widow of Mr. B. W. Conant, a witness who testified in this case, now deceased?

Ans. Yes, sir.

Int. 3 Did your husband have charge of the premises described in complainant's bill, on corner of Emerson and Myrtle streets, in the year 1874?

Ans. Yes, sir.

Int. 4. From the first day of June, 1874, down to the 31st of December of that year, who occupied said premises, if anybody?

(Objected to, as immaterial.)

Ans. Rev. Charles Wingate.

Int. 5. When did Mr. Wingate commence to occupy the premises?

(Same objection.)

Ans. It was during the winter, I think.

Int. 6. Do you mean winter of 1873 and 1874, or 1874 and 1875?

Ans. 1874 and 1875, I should say.

Int. 7. Within your knowledge, did Mrs. Burgess occupy the premises any part of 1874, prior to the occupation by Mr. Wingate?

(Objected to, as incompetent and immaterial.)

Ans. I think she was there during a part of the summer, immediately prior to Mr. Wingate's occupancy.

Int. 8. Do you know who occupied the premises in 1873?

(Objected to, as immaterial.)

Ans. I think a family by the name of Bornstein.

ELIZABETH CONANT.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Second Deposition of Horace C. Burgess.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Sept.* 29, 1881.

Int. 1 (*de bene*). Please state who, within your personal knowledge, occupied the premises described in complainant's bill during the summer of 1874.

226 (Objected to, as incompetent and immaterial.)

Ans. Mrs. Burgess, and myself occasionally.

Int. 2 (*de bene*). When did Mrs. Burgess commence to occupy the premises in the summer of 1874?

(Same objection.)

Ans. Some time in May; I think the last of May.

Int. 3 (*de bene*). Down to what time did she continue to occupy them?

(Same objection.)

Ans. Until it was let by Mr. Conant to Rev. Mr. Wingate.

Int. 4 (*de bene*). When was that?

(Same objection.)

Ans. That was in the fall of 1874.

Int. 5 (*de bene*). Who occupied the premises, within your knowledge, during the winter of 1874 and 1875?

(Same objection.)

Ans. Rev. Charles Wingate.

Int. 6 (*de bene*). Did Edw. B. Newhall, one of the respondents, have anything to do with complainant's property in Melrose during any part of the year 1874?

(Objected to, as incompetent, irrelevant, and immaterial.)

Ans. I never heard of him at that time.

Int. 7 (*de bene*). How frequently during the summer and fall of 1874 did you visit the property at Melrose?

(Objected to, as immaterial and irrelevant.)

Ans. Generally once a week.

Int. 8 (*de bene*). When you visited this property in the summer of

1874 did you find any person other than Mrs. Burgess in occupation of it?

(Same objection.)

Ans. Nobody but her servant she had with her.

Int. 9 (*de bene*). Did you have personal knowledge of the time when the grading of the premises was made in the spring or summer of 1880?

(Same objection.)

Ans. It was commenced the last week in May and finished the first week in June.

227 Int. 10 (*de bene*). Did you visit the premises and were you upon them during the day on Sunday, the 30th of May, 1880?

(Same objection.)

Ans. I was there.

Int. 11 (*de bene*). Were you also there Sunday previous to the 30th of May, 1880?

(Same objection.)

Ans. I was.

Int. 12 (*de bene*). On the Sunday previous to the 30th of May, 1880, had any work been done by any person in repairing the walks, grading the premises, or in hauling or depositing gravel for the purposes of grading, or had the grounds about the house been disturbed since the previous year?

(Same objection.)

Ans. There had been nothing done in regard to the grounds at all.

Int. 13 (*de bene*). How was it when you saw the premises on Sunday, the 30th of May, 1880?

(Same objection.)

Ans. They were partially finished—about half done, I should think.

Int. 14. When did Mrs. Burgess first visit Melrose in the spring of 1880 for the purpose of occupying the premises described in the complainant's bill?

(Same objection.)

Ans. About the 20th of May.

Int. 15. Prior to the 20th of May, 1880, and during any part of that year, had Mrs. Burgess been in occupation of the premises at Melrose?

(Same objection.)

Ans. She had not.

Int. 16. Had Mrs. Burgess been absent from her home in Providence during the thirty days prior to the 20th of May, 1880, to spend a night, within your recollection?

(Same objection.)

Ans. She had not.

228 Int. 17. During the thirty days prior to the 20th day of May, 1880, had Mrs. Burgess, within your knowledge, visited Melrose?

(Same objection.)

Ans. Not to my knoweldge.

Int. 18. Did you have personal knowledge as to who occupied the premises at Melrose during the year 1873?

(Same objection.)

Ans. Jacob Bornstein, if any one.

Int. 19. Did Mrs. Burgess occupy the premises during the year 1873 any part of the time?

(Same objection.)

Ans. Nothing more than to go and come for a day.

Int. 20. Are you acquainted with Alonzo V. Lynde, whose testimony is found on pages 121 to 133, inclusive, of the printed record in this case?

(Same objection.)

Ans. I am.

Int. 21. When did you meet him for the first time?

(Same objection.)

Ans. Some time in 1873 or 1874, I think, I became acquainted with Mr. Lynde.

Int. 22. When was the first time you saw Mr. Lynde during the year 1880?

(Same objection.)

Ans. I think about June 24.

Int. 23. Where was it, and who was present?

Ans. There was none present except Mrs. Burgess. It was at Mr. Lynde's house in Melrose.

(Same objection.)

Int. 24. During the year 1880, before the respondent Graffam took possession of the real estate at Melrose, did you see Mr. Lynde?

(Same objection.)

Ans. I had not. I had not seen him for five or six years.

Int. 25. On the occasion of your interview with Mr. Lynde, June 24, 1880, as stated in answer to Int. 23, did Mr. Lynde communicate to you, or to Mrs. Burgess in your presence, that prior to that

229 time he had any knowledge of the levy upon or sale of Mrs. Burgess's real estate in Melrose?

(Same objection.)

Ans. He did not say anything of the kind; it was not mentioned.

Int. 26. Did you, or did Mrs. Burgess in your presence, at that

interview, June 24, 1880, state to Mr. Lynde what had been done by Peter Graffam in relation to the estate at Melrose?

(Same objection.)

Ans. I stated that he had taken possession of the house and moved away the furniture.

Int. 27. When next after June 24, 1880, did you have an interview with Mr. Lynde, and where, and who was present?

(Same objection.)

Ans. I think it was the next day, at his office, in Boston. I think no one but Mrs. Burgess was there.

Int. 28. When was the next interview after June 25, 1880, where, and who was present?

(Same objection.)

Ans. I think about 28th or 29th of June, 1880, at the same place. Mrs. Burgess and myself were the only ones present.

Int. 29. After the interview referred to in the last answer, and prior to the filing of the complainant's bill, did you have any other interviews with Mr. Lynde?

(Same objection.)

Ans. I think I saw Mr. Lynde three times in all, being the interviews already described.

Int. 30. At any of these interviews was any one present during any part of them except Mr. Lynde, Mrs. Burgess, and yourself?

(Same objection.)

Ans. I think his son was there the last time in the room.

Int. 31. At any of the interviews which you had with Mr. Lynde during the year 1880 did Mr. Lynde inform you, or Mrs. Burgess in your presence, that Mr. Fairfield had told him that the furniture and property which had been removed from the house in Melrose could be had by Mrs. Burgess if she wanted it?

(Same objection.)

230 Ans. He said nothing of the kind to me, or to her in my presence.

Int. 32. Did Mr. Lynde, in your presence, inform Mrs. Burgess that Fairfield had told him where the furniture which had been taken from the house in Melrose had been stored?

(Same objection.)

Ans. He did not.

Int. 33. Did Mr. Lynde inform you, or Mrs. Burgess in your presence, during the year 1880, that the controversy between Mrs. Burgess and Peter Graffam could be settled by the tender of any sum of money?

(Same objection.)

Ans. He did.

Int. 34. What sum did he name?

(Same objection.)

Ans. Eleven hundred dollars.

Int. 35. At any of the interviews you had with Mr. Lynde did he inform you, or Mrs. Burgess in your presence, that the controversy with Peter Graffam could be settled for any less sum than eleven hundred dollars?

(Same objection.)

Ans. I don't recollect anything was said about any less sum. Eleven hundred dollars was the price they asked.

Int. 36. Please refer to the deposition of Mr. Lynde, page 128 of the printed record, and state fully what Mr. Lynde said to you, or to Mrs. Burgess in your presence, as to what Mr. Fairfield said to him, in any form of words, in regard to his (Fairfield's) intention to get the best of Mrs. Burgess?

(Same objection.)

Ans. He said something like this: "He had got the best of her and he was going to hold it."

Int. 37. Did Mr. Lynde, in any of the interviews you had with him, say to you, or Mrs. Burgess in your presence, that Fairfield wanted $500 for his own services in the controversy between Mrs. Burgess and Graffam and Newhall?

(Same objection.)

231 Ans. I remember distinctly that Mr. Lynde said that Mr. Fairfield claimed $500 for his own services. Those were just the words Mr. Lynde used.

Int. 38. Did Mr. Lynde, at either of the interviews, state to you, or to Mrs. Burgess in your presence, that he had been informed by Mr. Fairfield that Graffam had employed men who had watched the house for several days prior to June 22, 1880, to get possession during the absence of Mrs. Burgess?

(Same objection.)

Ans. He did at the last interview.

Int. 39. During the month of March, 1879, and specially prior to the 25th of said March, where was Mrs. Burgess, and what was her physical condition?

(Same objection.)

Ans. Mrs. Burgess was at home in Providence, R. I., sick, troubled very much with neuralgia in the head.

Int. 40. Was she attended by a physician; and if so, by whom?

(Same objection.)

Ans. Dr. Howard Oakey.

Int. 41. Please examine letter and envelope offered in evidence by the respondents, and marked respectively "Exhibits A and B, H. G. A., Com.," and tell me whether you are familiar with the

handwriting of your wife, Christine J. Burgess, and tell me whether either of them or any part of either of them are in her handwriting.

(Same objection.)

Ans. I am acquainted with my wife's handwriting. No part of either of them was ever written by my wife. The envelope, I never saw such a one in my house, and I never saw any such paper there. Mrs. Burgess generally uses my business envelopes, with my business notice on the corner.

Int. 42. Have you any personal knowledge that Mrs. Burgess, during the year 1879, received from Samuel N. Fairfield, by mail or otherwise, any letter bearing date March 17?

(Same objection.)

Ans. I am sure she never did, to the best of my knowledge.

Int. 43. Did Peter Graffam, Mr Lynde, or any other person, from the 22d of June, 1880, down to the time of the filing of the
232 complainant's bill, July 10, 1880, inform you, or Mrs. Burgess in your presence, where the furniture and other property taken from Mrs. Burgess's house in Melrose had been stored?

(Same objection.)

Ans. They did not.

Int. 44. During the year 1879 and prior thereto did you have a box in the post office at Providence, R. I.?

(Same objection.)

Ans. I did, and for eighteen years previous. During the whole time up to within a year the number of my box was 623.

Int. 45. Please state whether or not mail matter directed to Mrs. Burgess is usually deposited in your box at the post office in Providence.

(Same objection.)

Ans. Yes, sir.

Int. 46. Has that been the constant manner of delivering Mrs. Burgess's mail since the time she became your wife and moved to Providence, in 1868?

(Same objection.)

Ans. It has.

Int. 47. During the last five years have you known any instance where mail matter addressed to your wife, Providence, R. I., has not been placed in your box by the post office authorities at said Providence?

(Same objection.)

Ans. Not to my knowledge.

Int. 48. During the last five years do you know any instance where mail matter addressed to your wife as Mrs. H. C. Burgess,

Mrs. C. J. Burgess, or Mrs. Christine J. Burgess, has been delivered to your house and not been placed in your box at the post office?

(Same objection.)

Ans. I have seen letters directed in the three ways named in the interrogatory placed in my box, and never knew them to be delivered in any other way.

(Adjourned.)

233 SEPTEMBER 30, 10 a. m.

Int. 49. Please state whether or not you have personal knowledge that a letter or an envelope containing a notice of the sale of the premises was received in your box at any time during the year 1879 with an address in any form intended for yourself or Mrs. Burgess.

(Same objection.)

Ans. No, sir.

Int. 50. Did you ever know of the receipt of such notice by Mrs. Burgess, by mail or otherwise?

(Same objection.)

Ans. Not to my knowledge.

Int. 51. Are you acquainted with James W. Pickering, a witness who testified for the respondents, and whose testimony is found in the printed record from pages 158 to 164 inclusive?

(Same objection.)

Ans. I saw the young man with his father in front of my store at Providence some time after the filing of this bill.

Int. 52. Did you have any conversation with him in relation to this case?

(Same objection.)

Ans. No, his father did the talking.

Cross-examination by N. L. GRAFFAM, Esq., of counsel for defendants:

Cross-int. 53. How frequently during the spring of 1880 did you visit the premises described in the complainant's bill, at Melrose?

Ans. After the 20th of May I was there once a week, and sometimes intervening.

Cross-int. 54. Was any work being done on the premises on or about May 20, 1880, to your knowledge?

Ans. Nothing at all, on the outside at least.

Cross-int. 55. Had the outside of the house been repaired in any respect prior to May 20, 1880?

Ans. Not any.

Cross-int. 56. Will you now swear that no work had been
234 done either in repairing the house in any form outside, or grading walks, prior to May 27, 1880?

Ans. Nothing done, to my knowledge, before that time.

Cross-int. 57. Will you answer cross-int. 56, and swear whether or not any work had been done during the spring of 1880, either on the buildings or on the outside in the shape of grading walks, prior to May 27, 1880?

Ans. I did not understand the date in cross-int. 56. Before that time I think some work had been done in the rear of the house.

Cross-int. 58. What work had been done in the rear of the house prior to May 27?

Ans. The fence was being built during that week.

Cross-int. 59. Will you swear that you were not on the premises described in the complainant's bill at any time during the months of April or May, 1880, prior to May 20, 1880?

Ans. I was there the first week in April, once.

Cross-int. 60. For what purpose?

Ans. Mrs. Burgess had come two or three days before me, and remained during that week, then came home to Providence.

Cross-int. 61. Who were present other than yourself during that week of which you speak—on the premises; give their names?

Ans. A lady that Mrs. Burgess brought with her—a Mrs. Sampson.

Cross-int. 62. And how long did Mrs. Sampson remain in the house after you left?

Ans. The balance of the week, and came home with Mrs. Burgess.

Cross-int. 63. And whom did you leave in charge of the premises after you left?

Ans. Mrs. Burgess.

Cross-int. 64. And whom did Mrs. Burgess leave in charge of the premises, to your knowledge, after she left?

Ans. W. B. Conant, her agent.

Cross-int. 65. And what was W. B. Conant authorized to do in his capacity as agent, to your own personal knowledge?

Ans. Look out for the security of the house and grounds, and let the property when opportunity presented itself.

235 Cross-int. 66. And was Mr. Conant authorized to make any repairs on said premises?

Ans. No way except through the instructions of Mrs. Burgess.

Cross-int. 67. And did Mrs. Burgess, to your knowledge, authorize him to make any repairs on the premises?

Ans. Not to my knowledge; Mrs. Burgess did that in person.

Cross-int. 68. And were these repairs which Mrs. Burgess did in person done while she was there during the said first week in April?

Ans. There was nothing done to the grounds or to the outside of the house.

Cross-int. 69. How long did you remain there during the said first week in April?

Ans. Part of one day and one night.

Cross-int. 70. Then Mrs. Burgess may have repaired, or caused to have been repaired, some portion of the premises during the week she remained there, after you left, may she not, and you not know it?

Ans. If she had I should have seen it when I went there the second time.

Cross-int. 71. And will you swear that the piazza about the house was not repaired prior to May 20, 1880?

Ans. I do swear.

Cross-int. 72. Will you give the date when that was done?

Ans. I couldn't give the positive date; it was in the last week in the month and following on into June.

Cross-int. 73. And will you now swear that nothing whatever had been done towards repairing said premises prior to May 20, 1880?

Ans. Nothing external.

Cross-int. 74. Were the fences repaired prior to May 20, 1880?

Ans. No, sir.

Cross-int. 75. Were any external repairs or improvements made to said premises prior to May 27, 1880?

Ans. This work commenced the last week in May—I wouldn't say whether the 26th or 27th of May—and was finished during the first weeks of June.

236 Cross-int. 76. Will you swear that it may not have been commenced prior to the 26th of May, and after the 20th of May, 1880?

Ans. I do not know what day the 26th was, but it was the last week in May.

Cross-int. 77. How do you fix the date May 20, 1880, that Mrs. Burgess first occupied the premises in the spring of 1880?

Ans. From the fact I know when she left home at Providence.

Cross-int. 78. What fixes it in your mind that it was May 20, 1880, that she left home?

Ans. Facts relative to our household affairs, in regard to certain servants who left us at that time.

Cross-int. 79. To your knowledge, had Mrs. Burgess visited the premises described in her bill any time prior to May 20, and in the spring of 1880?

Ans. The first week in April.

Cross-int. 80. And did she visit the premises after the first week in April?

Ans. Not to my knowledge until the 20th of May.

Cross-int. 81. Could you swear positively she did not?

Ans. I can. She was an invalid at home most of the time during that spring, at home.

Cross-int. 82. And were you at your place of business in Providence continuously after the first week in April, 1880, up to May 20, 1880?

Ans. I could not swear to that; I am in Boston frequently on my business.

Cross-int. 83. For how long a time at any one time, after the first week in April, 1880, and prior to May 20, 1880, were you in Boston? State the number of days and nights, as near as you recollect.

Ans. I couldn't swear; as I may be in Boston three days in a week, and may not again for three weeks or a month.

Cross-int. 84. Were you in Boston after the first week in April,

and prior to May 20, 1880, at any one time covering a period of three days, according to your best recollection?

Ans. I will not swear I was.

Cross-int. 85. Will you swear you were not in Boston at
237 any one time between the first week in April, 1880, and 20th of May, 1880, and remained in Boston a period of three days?

Ans. I swear I was not.

Cross-int. 86. Do you frequently come to Boston and remain over night, attending to your business here?

Ans. I do not.

Cross-int. 87. Do you keep any memoranda of the days and dates when you visit Boston?

Ans. I do not.

Cross-int. 88. Have you anything on your book to indicate the days and dates that you were in Boston?

Ans. Nothing positive.

Cross-int. 89. Do you keep books of account?

Ans. I keep a regular set of books; have a book-keeper.

Cross-int. 90. And by referring to those books can you give me the date of the times you were in Boston?

Ans. No, sir.

Cross-int. 91. Do you purchase your goods in Boston?

Ans. A small portion, comparatively.

Cross-int. 92. And when you purchase goods in Boston, do you make a memoranda of a list of goods or articles you are to purchase in Boston?

Ans. Most generally on the back of one of my business cards.

Cross-int. 93. Have you those cards filed away?

Ans. No, sir.

Cross int. 94. I understand you to swear that it was your habit to come occasionally to Boston during the spring of 1880; is that true?

Ans. Yes, and all times of the year.

Cross-int. 95. And you cannot now swear that you may not have stopped in Boston during the spring of 1880, more than one day or night?

Ans. I do not swear I stayed all night in Boston. I have not stayed in Boston for ten years, all night.

Cross-int. 96. On your visit to Boston during the spring of 1880, did you remain away from your home in Providence over night after first week of April, 1880, and before 20th of May, 1880?

238 Ans. No, sir.

Cross-int. 97. Were you or Mrs. Burgess on the premises described in complainant's bill during the months of February or March, 1880?

Ans. Mrs. Burgess was very sick at the time, and was not, to my knowledge. I was not away from home.

Cross-int. 98. How do you fix the date that it was on the 24th of June you first talked to Mr. Lynde in reference to the matter of Mrs. Burgess with Peter Graffam?

Ans. From the fact I was informed by telegram that Peter Graffam had taken possession of the property on the 21st or 22d of June,

and I came to Malden and Melrose. Saw Mr. Lynde that evening; *i. e.*, 24th of June.

Cross-int. 99. Had you previous to this ever consulted Mr. Lynde on this matter?

Ans. I had not seen Mr. Lynde before to speak with him for six or seven years; in fact, I never saw him but once before.

Cross-int. 100. How long was this interview, which you say took place on June 24?

Ans. Probably half an hour.

Cross-int. 101. Mr. Lynde informed you at that time that he knew of a suit having been brought by Peter Graffam against Mrs. Burgess, did he not?

Ans. No, sir.

Cross-int. 102. If not at this time, when was it he first spoke to you about these suits having been brought?

Ans. I don't know as he ever mentioned to me about the suits or suit. He said he would look into the matter and see what he could do.

Cross-int. 103. And did he look into the matter?

Ans. From what he said I thought he had, some. He spoke of a writ of review.

Cross-int. 104. At what interview was it he spoke of the writ of review?

Ans. I think it was at the second interview.

Cross-int. 105. Was Mrs. Burgess present at this interview when he spoke of a writ of review?

239 Ans. I think she was.

Cross-int. 106. And did Mr. Lynde give a full account then of what had been done in the suits Peter Graffam against this complainant, and Edward B. Newhall against this complainant?

Ans. I don't think he gave me full particulars. He said something like this; that the proceedings were outrageous.

Cross-int. 107. In what respect did he consider the proceedings outrageous, as he stated them to you?

Ans. From the fact we had had no notice of it.

Cross-int. 108. Was that all he said about the proceedings being outrageous?

Ans. There might have been some preliminary talk.

Cross-int. 109. What was that preliminary talk, as you recollect?

Ans. It was in regard to looking up the records and seeing how the case stood.

Cross-int. 110. Did he point out to you any "outrageous" proceedings in these matters?

Ans. He said he should sue every one of them, and attach their real and personal property.

Cross-int. 111. Will you now answer cross-int. 111, and state whether or not he did point out to you any outrageous proceedings, as you say he called them, in the proceedings in the suits before referred to?

Ans. I will name one; the price of $1,100 to settle.

Cross-int. 112. Your answer to cross-int. 110 refers to a settlement

talked of at that time, and does not apply to the interrogatory. Will you now state whether or not Mr. Lynde pointed out any proceedings in the suits Peter Graffam against this complainant, and Edward B. Newhall against this complainant, which proceedings, as you say, he told you were outrageous?

Ans. He said he didn't think they would be sustained by the laws of Massachusetts.

Cross-int. 113. Then he did not point out to you any outrageous proceedings in the suits referred to in the above answers?

Ans. He did not go into the minute points, but said it was outrageous proceedings.

240 Cross-int. 114. Did he point out to you any one thing in connection with those suits referred to which he called outrageous, as you say; and if so, state what that thing is?

Ans. Nothing in the singular number.

Cross-int. 115. Then he did not point out to you any part of the proceedings referred to in those suits which he called outrageous?

Ans. He looked the matter over, and said it was outrageous.

Cross-int. 116. Then I understand you to swear that he simply called the proceedings outrageous, and did not show to you or point out to you any portion of those proceedings which were outrageous?

Ans. Those were the words he used.

Cross-int. 117. And he did not give you any idea wherein they were outrageous?

Ans. He applied to the laws of Massachusetts, and gave me to understand what he meant in the broad sense of the word.

Cross-int. 118. Then he gave you to understand that the laws of Massachusetts were outrageous?

Ans. No, sir.

(Adjourned.)

OCTOBER 3.

Cross-int. 119. Since your last testimony given herein, have you been able to learn in what respect the proceedings in the Graffam and Newhall suits were outrageous, as you say Mr. Lynde told you they were?

Ans. In the third and last interview with Mr. Lynde he told me he had looked up the court records, and the office who served that writ had not made a return within the time the law requires, and they —naming N. L. Graffam, Eastman, Fairfield, and Dillingham—had no more right to break in and enter that house than into his, and he should prosecute the whole party.

Cross-int. 120. In what connection did he mention N. L. Graffam as in any way connected with those suits? State fully, and give it in detail so far as you can.

Ans. The inference I drew from the conversation was that he was their attorney.

Cross-int. 121. I don't ask for your inference; will you now answer cross-int. 120, and state fully and particularly what Mr.

241 Lynde said to you bearing upon the question of N. L. Graffam's connection with those suits?

Ans. That he had looked up the court records——

Cross-int. 122. Did Mr. Lynde tell you that N. L. Graffam appeared as attorney of record, or appeared as attorney in any way whatever, in the suits Graffam and Newhall against this complainant? Answer yes or no.

Ans. I can't answer any other way. I will not be positive whether Mr. Lynde said N. L. Graffam was attorney of record, but I will say Mr. Lynde said he had conversation with him.

Cross-int. 123. Do you mean to swear that Mr. Lynde told you that N. L. Graffam was acting in the capacity of an attorney in any way in connection with those suits?

Ans. He didn't mention your connection, but your name. I rather think he said you were their attorney; I wouldn't be too positive in this fact.

Cross-int. 124. During these conversations with Mr. Lynde was the price for which a settlement could be made in the Graffam and Newhall suits mentioned? And if so, state what it was.

Ans. Yes; it was eleven hundred dollars.

Cross-int. 125. Now, are you able to swear that it was not the price for which a settlement could be made that was what Mr. Lynde referred to when he used the term, as you say, "outrageous"?

Ans. He said he had seen Mr. Fairfield, and that was the price, eleven hundred dollars.

Cross-int. 126. Then it may have been the price which Mr. Lynde considered outrageous, and not the proceedings in the suits named, may it not?

Ans. He spoke about the outrageousness of the case before he saw Mr. Fairfield; before there was any price mentioned.

Cross-int. 127. Did he not tell you that the price of settlement was outrageous?

Ans. I don't know that he did at that time.

Cross-int. 128. Did he at any time?

Ans. I don't recollect he did, unless he embodied the whole when he made the remark about the outrageousness of the proceed-
242 ings, and the price included. I wouldn't say whether he did or not mean to couple them together.

Cross-int. 129. Then you mean to be understood that some time during your communications with Mr. Lynde, and in some connection with the Graffam and Newhall suits, the term "outrageous" was used, and you are not positive now just how it was used; is that what you mean to be understood as saying?

Ans. I mean to say it was used in connection with those cases.

Cross-int. 130. Prior to the first week in April, and in the year 1880, had there been any repairing or any improvements made on the premises in question in Melrose?

Ans. Not to my knowledge.

Cross-int. 131. If there had been any repairing done were you in a position to know it?

A. Certainly I should.

Cross-int. 132. What time did you leave Melrose in the first week

in April, 1880, and when did you return again to Melrose in the spring of 1880?

Ans. I couldn't swear the dates positively. I left about the middle of the week. I came one evening and went away the next morning. I returned again to Melrose in the last week in May.

Cross-int. 133. At what time did your wife leave Melrose in April, 1880, to your knowledge, and what time did she return again in the spring of 1880?

Ans. She left the latter part of the first week. She returned about the 22d of May, I am sure. She was not there again in April at all, according to my recollection. I think she was sick at home.

Cross-int. 134. Will you swear that she wasn't there at any time between the periods spoken of in the last interrogatory?

Ans. Not to my knowledge; I should be apt to know.

Cross-int. 135. Haven't you already testified that she did not remain away from Providence any one day during the time between the first week in April and the 28th of May, 1880?

Ans. No, sir; it was the last week in May.

Cross-int. 136. Then we are to understand that she did not
243 remain away from her home in Providence at any time between the first week in April and the last week in May, 1880?

Ans. Not to my knowledge.

Cross-int. 137. Have you not already testified that she did not remain away from home over night any time between the first week in April and the 20th of May?

Ans. I say not to my knowledge.

Cross-int. 138. If you have testified so, do you desire to change your testimony?

Ans. No, sir.

Cross-int. 139. State, if you know, what were the first repairs made to the premises in question, made in the spring of 1880.

Ans. The back fence.

Cross-int. 140. What time was this?

Ans. About the 20th of May; not before.

Cross-int. 141. Was it commenced on the 20th of May?

Ans. Mrs. Burgess left home about the 20th of May; it was commenced some time after she got to Melrose.

Cross-int. 142. Were you present when it was commenced?

Ans. No, sir.

Cross-int. 143. When were the first repairs made on the house?

Ans. Some time after the 20th of May.

Cross-int. 144. Then the repairing may have commenced about the 21st of May, may it not?

Ans. It might, on the back fence.

Cross-int. 145. How do you fix the date the 20th of May?

Ans. I recollect Mrs. Burgess left home about the 20th of May.

Cross-int. 146. What fixes it in your mind as the 20th of May?

Ans. I can't answer more definite. I know it was about that time she left home. I will swear positive it was then, and there was no external work done prior to that time.

Cross-int. 147. Was there any work done inside prior to that time other than the plumbing, of which mention has been made?

Ans. Not to my knowledge.

HORACE C. BURGESS.

Attest: ARTHUR B. CLAPP,
Special Examiner.

244 *Deposition of Charles Wingate.*

Direct examination by E. P. BROWN, Esq., of counsel for complainant (*de bene*):

BOSTON, *Sept.* 30, 1880.

Int. 1. What is your name, age, residence, and profession?

Ans. Charles Wingate; sixty-six; Haverhill, Mass.; clergyman.

Int. 2. Did you ever occupy premises in Melrose, on corner of Myrtle and Emerson streets, belonging to the complainant, Christine J. Burgess; if so, when did you commence, and how long did you remain?

Ans. I occupied premises which Mr. Conant said belonged to Mrs. Burgess. I commenced, I think, the 1st of November, 1874, and occupied, I think, seven months. I hired it by the month.

Int. 3. When you negotiated for the occupation of said premises, were you brought in contact with or did you negotiate with the respondent, Edward B. Newhall?

Ans. I negotiated with and was brought in contact with no one but B. W. Conant, who had the keys.

Int. 4. Did you know Edward B. Newhall, the respondent in the transaction, in any way?

Ans. I don't know that I know him at all. I did not know him in the transaction.

Int. 5. To whom did you pay the rent?

Ans. I can't remember; most probably to Mr. Conant, as I hired the house of him.

Int. 6. Did you pay any rent to the respondent Newhall?

Ans. No, sir.

Cross-examination by N. L. GRAFFAM, Esq., of counsel for defendants:

Cross-int. 7. To whom did you first speak relative to hiring these premises?

Ans. Mr. Conant knew I desired to go to house-keeping rather than to be boarding, suggested this house to me; I liked the house and took it.

245 Cross-int. 8. What did you understand Mr. Conant had to do with it?

Ans. I understand he was acting as agent for Mrs. Burgess.

Cross-int. 9. Where was Mrs. Burgess at this time?

Ans. I don't know; I didn't know Mrs. Burgess at all in the transaction. Mrs. Burgess called to see me once or twice after I moved in.

Cross-int. 10. Where was Mrs. Burgess then living?

Ans. I understood her to be living in Providence.

Cross-int. 11. Did Mr. Conant tell you he was acting as agent for Mrs. Burgess?

Ans. Mr. Conant told me he had the renting of Mrs. Burgess's house. He had the keys.

Cross-int. 12. How long did you reside in Melrose?

Ans. I was rector there, I think, five years.

Cross-int. 13. Was your residence in Melrose previous to 1874?

Ans. Not five years before; but I lived there five years altogether.

Cross-int. 14. Where did you move to when you left Melrose?

Ans. Haverhill, Mass.

Cross-int. 15. Who occupied the premises after you left?

Ans. My impression is it was vacant for some time, but I don't know.

Cross-int. 16. Did you have any conversation with Mrs. Burgess about taking the house?

Ans. Not any, as I deposed above.

Cross-int. 17. You don't know but Mr. Newhall may have acted as her agent also in letting the house?

Ans. I don't know anything about it. Mrs. Burgess may have had several agents; Mr. Conant was the only one I ever came in contact with.

Cross-int. 18. What rent were you paying?

Ans. Fifty dollars a month.

Cross-int. 19. Did you hire the house furnished or unfurnished?

Ans. Furnished.

Cross-int. 20. Was it furnished with expensive furniture?

Ans. Very respectable, very comfortable, excepting the stove

246 Cross-int. 21. You were there during the winter of 1874 and 1875?

Ans. Yes.

Cross-int. 22. Who occupied the premises in the summer of 1874?

Ans. I don't know.

Cross-int. 23. Were they occupied, to your knowledge?

Ans. I don't know.

Cross-int. 24. Were there occupied, to your knowledge, in 1875?

Ans. I don't know a thing about it.

CHARLES WINGATE.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of Jacob L. Bornstein.

Direct examination by E. P. Brows, Esq., of counsel for complainant:

Boston, *Sept.* 30, 1880.

Int. 1. What is your name, age, residence, and occupation?

Ans. Jacob L. Bornstein; age, forty-five; residence, 79 Chandler street, Boston; occupation, clothing.

Int. 2. Are you acquainted with the complainant, Christine J. Burgess?

Ans. Yes, sir.

Int. 3. Did you occupy the premises owned by her in Melrose, situated on the corner of Myrtle and Emerson streets?

Ans. Yes, sir.

Int. 4. When did you occupy these premises?

Ans. First time in 1870, from June 1 to latter part of September. The second time in 1873, from June to latter part of September.

Int. 5. From whom did you hire the premises when you hired them in 1873?

Ans. In 1873, previous to my hiring the premises, I asked the agent who had the building in charge how much the rent was; he said $125 per month; I objected to price. I hired them from Mrs. Burgess.

247 Int. 6. What did you pay per month?

Ans. $125 per month.

Int. 7. When you hired the premises, did you agree to occupy them for more than four months?

Ans. No, sir.

Int. 8. To whom did you pay the rent?

Ans. Mrs. Burgess.

Int. 9. Have you ever occupied those premises since September, 1873?

Ans. No, sir.

Int. 10. Have you ever applied to any one for the use and occupation of said premises since September, 1873?

Ans. No, sir.

Cross-examination by N. L. GRAFFAM, Esq., of counsel for defendants;

Cross-int. 11. Where did you first meet the complainant, Christine J. Burgess?

Ans. I was introduced to her by my brother; we both occupied the house together. This was 1870.

Cross-int. 12. Did you or your brother hire the house when you occupied it in 1870?

Ans. My brother hired it at that time, and I signed the lease.

Cross-int. 13. To whom did your brother go, relative to hiring the house in 1870?

Ans. Mr. Jones, of Melrose.

Cross-int. 14. What did Mr. Jones have to do with the premises, to your knowledge?

Ans. He said he had the letting of them.

Cross-int. 15. Who hired the premises in 1873, you or your brother?

Ans. I did.

Cross-int. 16. To whom did you first talk, relative to hiring the house in the summer of 1873?

Ans. I went up State street, Boston, I think No. 9, to Mr. Newhall's office. I asked him whether he had the letting of this house in Melrose; he said he did. I asked the price; he said $125

248 per month; I said I wouldn't pay it. Then he said he had

other houses to let in Melrose for less price, and he gave me several numbers. I went out, looked at the houses with my daughter, but they did not suit me. Then I authorized my daughter to write a letter to Providence to Mrs. Burgess regarding her house. Mrs. Burgess came to my store in Boston a day or two after. I offered her less, but we finally closed the bargain there in the store for $125 per month for four months.

Cross-int. 17. You told Mrs. Burgess at that time, did you not, that you had been to see Mr. Newhall previous to her coming there in regard to hiring the house?

Ans. I can't remember. I might have told her, and might not.

Cross-int. 18. You first learned of the house being to let in 1873, of Mr. Newhall?

Ans. Yes, sir.

Cross-int. 19. And Mr. Newhall then told you he had the premises to let for Mrs. Burgess, did he not?

Ans. Yes, sir.

Cross-int. 20. From whom did you get the post-office address of Mrs. Burgess?

Ans. That I couldn't answer. My daughter wrote the letter. I suppose she knew the address.

Cross-int. 21. Do you know that you did not get the address from Mr. Newhall?

Ans. I did not get it from Mr. Newhall.

Cross-int. 22. Can you now recollect whether you first learned of Mrs. Burgess's address in Providence from Mr. Newhall, or some person in his office?

Ans. No, sir; I do not.

Cross-int. 23. Then you cannot swear that you did not get the address from Mr. Newhall; is that true?

Ans. I could not.

Cross-int. 24. Did you hire the house furnished?

Ans. Yes, sir.

Cross-int. 25. Was the house furnished with expensive furniture?

Ans. Yes, sir.

249 Cross-int. 26. Because of this expensive furniture in the house was in part the reason of paying the price you did for it, was it not?

Ans. Yes, sir.

Cross-int. 27. Did you occupy the premises more than four months?

Ans. I did not.

Cross-int. 28. Did you see Mr. Newhall after moving into the house?

Ans. I never did.

Cross-int. 29. When Mrs. Burgess came to your store, do you now remember of saying to her anything relative to having seen Mr. Newhall in regard to letting the house?

Ans. I told Mrs. Burgess I went to see Mr. Newhall to try to hire the house. I refused to pay $125 per month; I thought it too high.

Cross-int. 30. Did Mrs. Burgess say anything to you at that time relative to what Mr. Newhall had done toward letting the premises?

Ans. No, sir.

Cross-int. 31. Did she say to you he had nothing to do toward letting the premises?

Ans. I am not positive.

Cross-int. 32. She recognized him as her agent in letting the premises, did she?

Ans. I am not positive.

JACOB L. BORNSTEIN.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of Ida A. Sampson.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Oct.* 3, 1881.

Int. 1. What is your name, age, and residence?

(Objected to as immaterial.)

250 Ans. Ida A. Sampson; age, twenty-five; reside in Providence, R. I.

Int. 2. Are you acquainted with the complainant, Christine J. Burgess?

(Same objection.)

Ans. Yes, sir.

Int. 3. Did you visit Melrose with Mrs. Burgess in the spring of 1880? And, if yea, state whether you were in and upon the premises on the corner of Myrtle and Emerson streets, in said Melrose.

(Same objection.)

Ans. I did, and was on the premises.

Int. 4. How long did you remain at Melrose with Mrs. Burgess?

(Same objection.)

Ans. One week.

Int. 5. What time in the spring of 1880 was it?

(Same objection.)

Ans. April—first week in April.

Int. 6. Did you go to Melrose on the occasion of the visit referred to with Mrs. Burgess, and did you remain with her and return to Providence with her?

(Same objection.)

Ans. I did go; remained with her, and returned with her.

Int. 7. And were you there upon the premises daily during your entire visit in Melrose?

(Same objection.)

Ans. Yes, sir.

Int. 8. During your said visit to Melrose, what repairs, if any, were made upon the grounds or upon the house, either inside or outside?

(Same objection.)

Ans. There was nothing except some plumbing.

Cross-examination by N. L. GRAFFAM, Esq., of counsel for defendants:

Cross-int. 9. On what date in April, 1880, did you arrive at Melrose in company with Mrs. Burgess?

Ans. I couldn't say.

251 Cross-int. 10. What fixes it in your mind that it was the first week in April, 1880?

Ans. On account of some business I had at home.

Cross-int. 11. What had this business to which you refer to do with your coming to Melrose with Mrs. Burgess?

Ans. It had not anything to do with it.

Cross-int. 12. Will you state, then, more fully how you fix the time as the first week in April when you came to Melrose?

Ans. I knew it must be some time near the first of the month; it was cold at that time.

Cross-int. 13. Is this all the reason you can give for its being the first week in April?

Ans. Yes, sir.

Cross-int. 14. Then you cannot now swear positively that it was not the second week in April?

Ans. It was not; it was the first week.

Cross-int. 15. Have you talked this matter over with Mrs. Burgess?

Ans. No, sir.

Cross-int. 16. Will you state what the business was to which you refer in your answer to Int. 10 as fixing in your mind that it was the first week in April, 1880, that you came to Melrose with Mrs. Burgess?

Ans. I went to Melrose on account of my health. I expected some money, and it did not come.

Cross-int. 17. Is this the only reason which you can give for fixing the date as the first week in April as the time when you arrived in Melrose?

Ans. Yes, sir.

Cross-int. 18. What is there about this expectation of money, to which you refer in answer to Int. 16, as fixing the date when you came to Melrose as the first week in April, 1880?

Ans. Because I was to have it the 1st of April.

Cross-int. 19. Was this money to be paid you by any party on the first day of April, 1880? And, if so, state by whom.

Ans. It was to be sent to me by my husband on the first day of April.

252 Cross-int. 20. Did he send it to you on the first day of April?

Ans. No, sir.

Cross-int. 21. Did he send it to you at any time while you were in Melrose?

Ans. No, sir.

Cross-int. 22. What is your husband's name?

Ans. Charles E. Sampson.

Cross-int. 23. Is your husband in Boston to-day?

Ans. No, sir.

Cross-int. 24. Where were you on the first day of April, 1880?

Ans. I couldn't say, only I know it was the first week I came to Melrose.

Cross-int. 25. You have no definite means of knowing it was not the second week in April, 1880, that you came to Melrose?

Ans. Nothing more than that.

Cross-int. 26. You will not swear positively that it was not the second week?

Ans. I know it was not the second week.

Cross-int. 27. Were you summoned here as a witness?

Ans. No, sir.

Cross-int. 28. Were you paid for coming here?

Ans. No, sir.

Cross-int. 29. Do you expect pay for coming here?

Ans. No, sir.

Cross-int. 30. Did you come here in company with Mrs. Burgess from Rhode Island?

Ans. Yes, sir.

Cross-int. 31. Did you pay your own fare, or did Mrs. Burgess pay it for you?

Ans. Mrs Burgess paid it, as she always does when I come here. I have been here a great many times with her.

Cross-int. 32. Did you come here to-day solely on purpose to testify here?

Ans. No, sir.

Cross-int. 33. Did you talk this matter over on the way here with Mrs. Burgess?

Ans. No, sir.

253 Cross-int. 34. Was this suit spoken of betweeen you and Mrs. Burgess prior to your testifying here?

Ans. No, sir.

Cross-int. 35. Do you mean to swear that you did not know you were to testify in this case to-day?

Ans. I did not.

Cross-int. 36. For what other purpose did you come here to-day?

Ans. In company with Mrs. Burgess.

Cross-int. 37. Is that the only reason you have for coming here to-day?

Ans. Yes, sir.

Cross-int. 38. What conversation did you have with Mrs. Burgess prior to coming in here relative to what you were to testify to here?

Ans. Nothing.

Cross-int. 39. Will you now swear that there was no conversation or communication passing between you and Mrs. Burgess or any

other persons relative to this suit at any time prior to coming in here and testifying?

Ans. Mr. Brown; that is all.

Cross-int. 40. And you came here to Boston in company with Mrs. Burgess for the only and sole purpose of accompanying her here, and did not at any time prior to coming have any conversation whatever with Mrs. Burgess relative to this suit?

Ans. Yes, sir.

Cross-int. 41. How far from Mrs. Burgess do you reside in Providence?

Ans. I should think about a mile.

Cross-int. 42. Do you visit Mrs. Burgess frequently?

Ans. Sometimes.

Cross-int. 43. Have you visited her frequently of late?

Ans. No more and not as much as I have for some time before.

Cross-int. 44. Is this the first you ever heard of this bill brought by this complainant?

Ans. I have heard a great deal about it, but nothing particular with me.

254 Cross-int. 45. From whom did you first hear of this suit?

Ans. It was in the paper.

Cross-int. 46. In what paper?

Ans. I couldn't say.

Cross-int. 47. Will you swear you saw it in any paper?

Ans. Yes, sir.

Cross-int. 48. How long ago, according to your best recollection, did you see it in a paper?

Ans. In 1880, some time in first part of year; some time near July, I think.

Cross-int. 49. And during all of this time you have never mentioned the matter to Mrs. Burgess, or she to you?

Ans. Yes, sir; but nothing as regards to me.

Cross-int. 50. What do you mean by "as regards to me"?

Ans. I knew nothing about it, one way or other.

Cross-int. 51. Mrs. Burgess did not mention the matter to you in any way, while on your way from Providence here to Boston?

Ans. No, sir.

Cross-int. 52. Don't you regard this fact, if it is a fact, of Mrs. Burgess not mentioning this matter to you in any way on your passage from Providence to Boston, as something quite remarkable?

Ans. I don't know but it is.

Cross-int. 53. During the time, the first week in April, 1880, as you say, were there any repairs made on the house in question, in Melrose?

Ans. Nothing, except the plumber came.

Cross-int. 54. How long did you remain there?

Ans. A week.

Cross-int. 55. There had been no repairing done to said house, either outside or inside, prior to your going there?

Ans. I don't think there had.

Cross-int. 56. If there had been any repairing done, would you have been likely to have known it?

Ans. No, sir.

Cross-int. 57. Then you can't swear that there had not been repairing done on said house prior to your going there?

255 Ans. No, sir; I couldn't say. Nothing was done while I was there; that is, all I know anything about.

Cross-int. 58. Haven't you already testified that there had been no repairing done that spring prior to your going there?

Ans. Yes, sir.

Cross-int. 59. Was this plumbing, of which you speak, the first repairs that were made on the house in question during the spring of 1880?

Ans. Yes, sir.

IDA A. SAMPSON.

Attest: ARTHUR B. CLAPP,
Special Examiner.

256 *Further Evidence for Defendants, taken Pursuant to the Sixty-seventh Rule of the Supreme Court of the United States, in Equity, as amended, before me, Horace G. Allen, Special Examiner.*

BOSTON, *Oct.* 22, 1881.

Present: E. P. Brown, Esq., of counsel for complainant; N. L. Graffam, Esq., of counsel for defendants.

Deposition of Patrick Taff.

Direct examination by N. L. GRAFFAM, Esq., of counsel for defendants:

Int. 1. What is your name, age, residence, and occupation?

Ans. Patrick Taff; forty-three years; gardener and laborer; Melrose.

257 Int. 2. Do you know Christine J. Burgess, of Providence, R. I., the complainant in this suit?

Ans. Yes, sir.

Int. 3. How long have you known her?

Ans. I have known her as long as I worked for her. I worked five days, and she discharged me and let me go, and paid me. I went to work the 17th of May, 1880, and I left the 22d of May, 1880.

Int. 4. State what kind of work you did for Mrs. Burgess in the spring and in the month of May, 1880.

Ans. I agreed to do her grading, but she didn't want to pay me the amount of wages I wanted, so she let me go. I moved some loam from one part of her place and left it on another part, in order to commence grading; she then asked me if I would work for less wages, and I said no, and then she paid me off. There was two men I took there, and they worked after I left.

Int. 5. State what two men you refer to in your answer to Int. 4.

Ans. Mr. Thomas Hawkins and Mr. Thomas Duffy.

Int. 6. Did you see any other work being done on the premises while you were there?

Ans. I seen other work being done by carpenters there, but didn't mind what it was. I seen them pruning trees and building piazzas.

Int. 7. Will you state more definitely how you fix the time that you worked for Mrs. Burgess?

Ans. The way I know is, that I am perfectly sure that I was there either the 17th or 18th of May, and left four or five days after; I am perfectly sure of it, or I wouldn't swear to it; it is none of my business, neither one side or the other.

Int. 8. Can you state what day of the week it was that you went to work for Mrs. Burgess?

Ans. I am sure it was on Monday.

Int. 9. And the Monday in question comes on the 17th of May, 1880, does it?

Ans. Yes.

Int. 10. Do you know Patrick Finn, of Melrose?

Ans. Yes.

258 Int. 11. Do you know of your own knowledge whether or not Patrick Finn did any work for Mrs. Burgess prior to your working for Mrs. Burgess in May, 1880?

Ans. I can't say that he did.

Int. 12. And was this the way that you first knew Mrs. Burgess and first was employed by her, in May, 1880?

Ans. It was.

Int. 13. Was Mrs. Burgess on the premises at the time you were working there?

Ans. Yes; she was there, all except one day, when she went home.

Int. 14. And where did she go when she went home, as you say?

Ans. I don't know where her residence was.

Int. 15. Did you have any conversation with Mrs. Burgess during the time you were employed on her place at Melrose?

Ans. Yes, sir.

Int. 16. How frequently did you have conversation with her?

Ans. Most every day that I was there she talked to me. She said she wanted her place graded so and so, and I told her I would do it to her satisfaction, and if she didn't like it I wouldn't ask no money.

Cross-examination by E. P. BROWN, Esq., of counsel for complainant:

Cross-int. 17. In your answer to Int. 8, you say that you worked for Mrs. Burgess on the seventeenth day of May; will you swear that it wasn't the twenty-seventh day of May, instead of the seventeenth?

Ans. I will, sir.

Cross-int. 18. Have you not during the period since this suit was commenced stated to Richard T. Atkin, of Boston, that you commenced work for Mrs. Burgess on the twenty-seventh day of May, and continued in her employ until after Decoration Day?

Ans. No, sir.

Cross-int. 19. Did you work for Mrs. Burgess on Decoration Day?

Ans. No, sir.

Cross-int. 20. What work was it that you saw being done by carpenters while you were there employed?

259 Ans. I see them fixing a piazza.

Cross-int. 21. Had they commenced to fix the piazza when you commenced work?

Ans. They were fixing it when I commenced work.

Cross-int. 22. Did you know the carpenters who were fixing the piazza?

Ans. No, sir.

Cross-int. 23. Did you know where they came from?

Ans. No sir; I did not.

Cross-int. 24. What makes you fix the time when you commenced work for Mr. Burgess as the 17th of May?

Ans. Because I am sure of it according to what I worked in other places, where I keep time for.

Cross-int. 25. Please produce the book where you kept time for in any other place, and let us examine it.

Ans. I can't do it to-day. I didn't know that you would want it I can tell where I worked the 24th, 25th, 26th, and 27th of May.

Cross-int. 26. Where is the book?

Ans. In Melrose.

Cross-int. 27. And did you examine it for the purpose of fixing the date when you worked for Mrs. Burgess?

Ans. I had to, sir.

Cross-int. 28. Was the book in your handwriting?

Ans. Yes, sir.

Cross-int. 29. What were the entries you made in that book indicating where you worked on the 23d, 24th, 25th of May? State as far as you remember.

(Objected to.)

Ans. It was in the book where I worked on those days, and I looked it over and saw where I did work; I wrote day and date, the name of the man I worked for, Mr. McIntire; nothing else that I know of.

Cross-int. 30. How happens it that you could read and write in May, 1880, and could not write your name on Oct. 12, 1881?

Ans. When I got my hand hurted on the ice, and ever since I could not hold my pen good. It was last winter.

Cross-int. 31. Did you have a doctor for your hand?

260 Ans. I did not, sir.

Cross-int. 32. Which hand was it that you got hurt?

Ans. The right hand.

Cross-int. 33. Haven't you stated to several persons recently that you could neither read or write, and never could?

Ans. I have not, sir.

Cross-int. 35. Didn't you state to Mr. Allen, the magistrate, that you couldn't write your signature, when you then made your mark?

Ans. I told him I couldn't handle the pen.

Cross-int. 35. Please write your signature on a piece of paper, and give it to the magistrate.

(Witness does so, and same is annexed as Exhibit 1.)

Cross-int. 36. Will you now produce the book referred to in your answers in this cross-examination?

Ans. I will.

PATRICK TAFF.

Attest: H. G. ALLEN,
Special Examiner.

BURGESS
v.
GRAFFAM *et al.* } No. 1427.

At close of deposition of Patrick Taff, Oct. 22, 1881, printed on page 227 of the record, the examiner made the memorandum printed below, which is omitted in the printed record.

J. G. S., *Clerk.*

Memorandum.

Adjourned to Oct. 24, 1881, at 10 o'clock a. m.

BOSTON, *Oct.* 24, 1881.

NOTE.—At ten o'clock this day Mr. E. P. Brown was present, together with Mr. N. L. Graffam, but the witness did not appear. At two o'clock the witness came in, stating that he understood he was to come at two o'clock. Mr. Graffam states that he has notified Mr. Brown that witness was ready for examination, and that Mr. Brown refuses to go on, on the ground that the time for taking testimony of respondents had elapsed; that Mr. Brown had been present this day after witness arrived, but refused to go on, and went away.

H. G. ALLEN,
Special Examiner.

EXHIBIT 1.—PATRICK T. TAFF. Attest: H. G. ALLEN, *Special Examiner.*

Depositions of Patrick J. Finn.

Direct examination by N. L. GRAFFAM, Esq., of counsel for defendants:

Int. 1. State your name, age, residence, and occupation.

Ans. Patrick J. Finn; twenty-eight years old; mason; Melrose.

Int. 2. Do you know Christine J. Burgesss, of Providence, R. I., the complainant in this suit?

Ans. I have seen a lady that I supposed to be of that name, that employed me in Melrose.

Int 3. How long have you known Mrs. Burgess?

Ans. I seen her a year ago last May—that is, 1880.

Int. 4. Were you employed in May, 1880, by Mrs. Burgess, to do work upon her premises in Melrose?

261 Ans. I was employed by a lady who called herself Mrs. Burgess, who lived on the corner of Myrtle and Emerson streets, in Melrose, in May, 1880, to the best of my opinion.

Int. 5. And what were you employed to do by Mrs. Burgess on the premises in question?

Ans. I was employed to repair the underpinning on the northwesterly side of her house.

Int. 6. State what time in May, 1880, you did this work referred to in your last answer.

Ans. To the best of my opinion, it was the 7th of May.

Int. 7. How do you fix the date as being the 7th of May as being the time you did the work?

Ans. It was on a Friday afternoon that the 7th fell on that year, and I got paid for it Saturday morning, to the best of my opinion.

Int. 8. And was this the Saturday morning following the Friday which you say fell on the 7th of May, 1880, that you were paid for your services?

Ans. I got paid the day after I done the work, which I supposed was on the 8th.

Int. 9. And during the time you were doing this work did you see Mrs. Burgess on or about the premises?

Ans. I see a lady that was pointed out to me as Mrs. Burgess.

Int. 10. Have you any doubt in your own mind that the lady who was pointed out to you was actual by the Mrs. Burgess, the complainant in this bill?

Ans. I believe she was the Mrs. Burgess that owned the property.

Int. 11. And was the lady pointed out to you as Mrs. Burgess the one who employed you to do the work around the premises?

Ans. Yes, sir.

Int. 12. Did you have any conversation with Mrs. Burgess at this time?

Ans. I went there to work, and the lady pointed out to me as Mrs. Burgess pointed out the work she wanted done, and told me what to do.

Int. 13. Did you see any other persons working on the premises at this time? And, if so, state who.

262 Ans. Yes, two carpenters. I don't know their names.

Int. 14. Did you have any conversation with these carpenters as to the length of time they had been employed prior to your going there to work for Mrs. Burgess?

Ans. Yes.

Int. 15. What was said to you by the carpenters on that subject, as to how long they had been employed by Mrs. Burgess prior to your going there?

Ans. I was speaking to one of them, and he told me that he had been there between ten days and two weeks, doing carpenter work, building piazzas and doing repairs around the house.

Int. 16. Did you see any repairs being done on the house, such as repairing piazzas and other external improvements, during the time you were there? And, if so, state what.

Ans. Yes, they were building piazzas, one on the northwest side

and one on the west side, I believe you call it; one on the front and one on the L, both facing Myrtle street.

Cross-examination by E. P. Brown, Esq., of counsel for complainant:

Cross-int. 17. In your answer to direct Int. 7, you say that in the best of your opinion you went to work for Mrs. Burgess on the seventh day of May; did you make any memoranda of the date?

Ans. No, sir.

Cross-int. 18. How do you fix the date?

Ans. I have no way of fixing it, only from my memory.

Cross-int. 19. Do you mean to testify positively that it was May 7, and that it was not June 7? Please answer yes or no.

Ans. Yes; I mean to say that it was the 7th of May, not June.

Cross-int. 20. Had the carpenters been at work when you did the work referred to on the underpinning?

Ans. The carpenters were to work there when I went there.

Cross-int. 21. Who were the carpenters; did you know their names?

Ans. No, sir.

Cross-int. 22. Did you ever see them before?

Ans. No, sir.

Cross-int. 23. How many were there?

263 Ans. Two.

Cross-int. 24. Did you know where they were from?

Ans. No, sir; only what they told me.

Cross-int. 25. What did they tell you?

Ans. That they were from Providence or Portland, I don't know which. I know well that they didn't belong in Melrose.

Cross-int. 26. Did they direct you where to put up the underpinning?

Ans. I was directed by one of the carpenters and the lady that came after me.

Cross-int. 27. Who was the lady that came after you?

Ans. Mrs. Burgess the men called her.

Cross-int. 28. Not this lady who is now present?

Ans. I don't know, sir; I can't identify her.

Cross-int. 29. Do you ever recollect to have seen the lady who is present before to-day?

Ans. When I saw her first to-day, I seemed to recollect her features; I think I did. Her features looked familiar when I came in here.

Cross-int. 30. Mr. Finn, do you mean to say that you are so positive that you commenced to work for Mrs. Burgess on the seventh day of May that you wouldn't change your testimony even if you were satisfied that the carpenters referred to did not arrive in the town of Melrose until the morning of the 20th of May?

Ans. I do not wish to change the statement that I made, because I was not positive when they got to town; I do not know anything about it.

Cross-int. 31. Did you give a receipt for your work to Mrs. Burgess after she paid you?

Ans. I don't remember.

Cross-int. 32. Who paid you?

Ans. I believe it was Mrs. Burgess that gave the money to the carpenter to give me.

Cross-int. 33. Did the carpenter give you the money in settlement for your labor?

Ans. Yes, sir.

Cross-int. 34. How much did he give you?

264 Ans. Two dollars.

Cross-int. 35. When was it that the carpenter paid you the $2.00? Give us the date as near as possible.

Ans. The morning after I done the work.

Cross-int. 36. Did you give him a receipt?

Ans. I don't remember whether I gave him a receipt for the money or not.

Cross-int. 37. Did you make any memoranda in any book that you had received this money?

Ans. No, sir.

Cross-int. 38. Were you at work for yourself at the time or working for another?

Ans. Working for myself.

Cross-int. 39. Who told you that it was the seventh day of May that you worked for Mrs. Burgess?

Ans. Nobody.

Cross int. 40. When did you first tell any one that it was the 7th of May that you worked for Mrs. Burgess?

Ans. About a week ago, I guess it was.

Cross-int. 41. And to whom did you tell it?

Ans. To one of the men who worked on the place out there.

Cross-int. 42. What was his name?

Ans. I don't know which one it was.

Cross-int. 43. Have you ever been in the employ of Peter Graffam?

Ans. Yes, sir.

Cross-int. 44. When last?

Ans. About a year ago last August.

Cross-int. 45. Have you seen him recently?

Ans. I have seen his nose at the door this morning; I saw him in the hallway this morning.

Cross-int. 46. Have you had any conversation with him about this case?

Ans. No, sir. He asked me this morning what I was in here for, and I told him I was summoned here.

Cross-int. 47. Were you the only person who pointed up the underpinning at the time the carpenters were there at work?

265 Ans. I don't know whether there was any more done or not.

Cross-int. 48. Did you see anybody else pointing the underpinning while the carpenters were there at work?

Ans. No, sir.

Direct examination resumed:

Int. 49. Since you began to give your testimony here, referring now to that part of your testimony taken prior to that given to-day, has anybody approached you from the other side and interviewed you in regard to your testimony already given and that to be further taken?

Ans. Yes, sir.

Int. 50. State who, if you know.

Ans. They didn't give me their name. A gentleman came out yesterday where I was working.

Int. 51. Did you ever see them before and have you seen them since?

Ans. I never see him since or before.

Int. 52. In your answer to Cross-int. 30, referring to the date on which you first went to work for Mrs. Burgess, do you mean to be understood that you do not wish to change that date as being the date on which you went to work, regardless of whatever the testimony may be of other parties who have heretofore or may hereafter testify in this matter?

Ans. Yes, sir; I don't wish to change it.

Int. 53. Will you now state, as near as you can, what had been done in the way of repairing the premises in question at the time and prior to your going to work on them?

Ans. I don't know of anything that had been done, only that I wsa the carpenters to work on there.

PATRICK J. FINN.

Attest: H. G. ALLEN,
Special Examiner.

Mr. Brown, of counsel for complainant, here gives notice that under the order of the court permitting the taking of this testimony he will object that the redirect examination shall not be made part of the record.

266 *Deposition of Thomas Hawkins.*

Direct examination by N. L. GRAFFAM, Esq., of counsel for defendants:

Int. 1. State your name, age, residence, and occupation.

Ans. Thomas Hawkins; fifty-five years; Melrose, Mass.

Int. 2. Do you know Mrs. Christine J. Burgess, of Providence, R. I., the complainant in this case?

Ans. Yes, sir; I never knew her till I went to work for her.

Int. 3. What work did you do for Mrs. Burgess, and where?

Ans. I did some brick-work, some pointing, some stone-work, and grading for her on her place at Melrose; it was in the month of May.

Int. 4. Do you know Frank Upton, of Melrose?

Ans. Yes, sir.

Int. 5. Do you know whether or not he worked on Mrs. Bur-

goss's place during the month of May, 1880; if so, what part of the month?

Ans. Yes, sir; he did. He told me that he hauled gravel there May 27; that was while I was working there.

Int. 6. Did you do any work for Mrs. Burgess before the 27th of May, 1880?

Ans. Yes, sir.

Int. 7. And was this before the time or after the time that Frank Upton went to work there?

Ans. It was before; I went to work before Frank Upton did any work there; I went there along with Mr. Taff, and I began to work the very day he did.

Int. 8. Did you have any conversation with Mrs. Burgess at that time?

Ans. She would come out, and if she wanted anything done about the place she would come out and tell me to do it so and so.

Int. 9. Was she on or about the premises all the time you were to work there?

Ans. I don't think I was there a day that I didn't see her; there may have been.

267 Int. 10. Was the Mr. Taff referred to by you in your answer to Int. 7 the same Mr. Taff who has testified here to-day?

Ans. Yes, sir.

No cross-examination.

THOMAS HAWKINS.

Attest: H. G. ALLEN,
Special Examiner.

Deposition of Christian L. Hoffman.

Direct examination by N. L. GRAFFAM, Esq., of counsel for defendants:

Int. 1. State you name, age, residence, and occupation.

Ans. Christian L. Hoffman; forty-eight years; Melrose; concrete paving, gardening, etc.—contract work.

Int. 2. State whether or not you have done any work for the complainant in this suit, Mrs. Christine J. Burgess; and, if so, when and where.

Ans. I did, on her premises in Melrose; I think the 2d or 3d of June, 1880.

Int. 3. Whether or not Mrs. Burgess employed you to do the work?

Ans. She did.

Int. 4. State whether or not you saw any parties at work on the premises at any time prior to your going to work there.

Ans. Yes, sir; I saw parties working there before I went there.

Int. 5. State what these parties were doing on the premises.

Ans. There was a carpenter working there.

Int. 6. Was there more than one carpenter working there at this time?

Ans. One carpenter.

Int. 7. How long before you went to work there was it that you saw the carpenter working there?

Ans. I wouldn't tell, and I couldn't.

Int. 8. Will you now answer the last interrogatory, and state why you would not tell how long the carpenter had been to work there previous to your going there?

Ans. I couldn't.

268 Int. 9. Was anything said during the time you was working there on the premises by the carpenter as to how long he had been there?

Ans. No, sir; except that I asked him how long he had been working there, and he told me about six weeks.

Int. 10. Had the piazzas been repaired prior to the time of your going there?

Ans. Yes, sir.

Int. 11. What had been done on the piazzas, as near as you can recollect?

Ans. Well, they told me that the sills and posts were rotten, and they had to raise them up and put new sills, posts, and flooring on.

Int. 12. Were you passing by the premises frequently during the spring of 1880?

A. I did once in a while.

Int. 13. And were these repairs being made at the times when you were passing, and did you see them being made?

Ans. I see them being made at this time, in May, 1880.

Int. 14. Do you remember of seeing any repairs being made about the first of May, 1880?

Ans. No, sir; perhaps I did, but I couldn't tell.

Int. 15. Are you the witness who was called by the complainant in this suit, and whose testimony has been taken for the complainant?

Ans. Yes, sir; I am.

Int. 16. State how long prior to your going to work for Mrs. Burgess it was that you had the conversation with her about going to work for her.

Ans. Perhaps it was between two and three weeks.

Int. 17. State to the best of your recollection whether it was nearer three weeks than two weeks that you had this conversation with her.

Ans. I couldn't tell that; it was some—pretty near two weeks or three weeks.

Int. 18. State to the best of your recollection what time in the month of May, 1880, this conversation took place referred to in Int. 16.

269 Ans. I couldn't tell; I say between two and three weeks before I began to work there.

Int. 19. Did you see Mrs. Burgess on or about the premises during the month of April or May, 1880, and prior to the 17th of May?

Ans. That is a question that it is hard to answer. Mrs. Burgess

came over to my house in the evening and asked me—she wanted me to do some work around her place, and she heard from other parties that there was a good man to lay out a kind of a place like that, or know what to do there or ought to be done, for she didn't know anything about this kind of work; and then I told her I would do it just as cheap as the next one, and to her satisfaction. No, sir; I did not; I couldn't tell if I saw her in April; I saw her in May.

Int. 20. State what part of May it was that you saw her on the premises.

Ans. It was the last two weeks in May.

Int. 21. Had any work been done on the premises in way of repairing piazzas by carpenters prior to the time when Mrs. Burgess first spoke to you about your going to work there?

Ans. I think not; not on the piazzas—I think, the fence; I wouldn't answer on that question, and I couldn't; I couldn't tell; the first time that Mrs. Burgess spoke to me there was nothing done there.

Int. 22. And you can't state definitely just when it was that Mrs. Burgess spoke to you about going to work?

Ans. About two or three weeks before I went to work.

Cross-examination waived.

CHRISTIAN L. HOFFMAN.

Attest: H. G. ALLEN,
Special Examiner.

Deposition of Mary F. Woods.

Direct examination by N. L. GRAFFAM, Esq., of counsel for defendants:

Int. 1. State your name, age, and residence.

Ans. Mary F. Woods; Melrose; twenty years old.

Int. 2. Do you know Christine J. Burgess, of Providence, R. I., the complainant in this suit?

270 Ans. I don't know her to speak to her; I know her by eyesight.

Int. 3. Do you know whether or not Mrs. Burgess ever lived in Melrose; if yea, where?

Ans. She did, on the corner of Myrtle and Emerson streets.

Int. 4. State whether or not you saw Mrs. Burgess on the premises where she lived in Melrose at any time during the spring of 1880; and, if so, when.

Ans. I did; I saw her about the last of April.

Int. 5. How do you fix the time as being the last of April that you saw her on the premises?

Ans. Because—the reason why I fix the last of April is because she came for my father to go to work for her between the last of April and about the first of May, 1880.

Int. 6. About how long before she came to get your father to work for her was it that you saw her on the premises in question?

Ans. I should think about a week or ten days.

Int. 7. How frequently during the spring of 1880 did you see Mrs. Burgess on the premises corner of Myrtle and Emerson streets?

Ans. She was off and on about all the spring, back and forth there.

Int. 8. State whether or not you had occasion to pass her house frequently during the spring of 1880; and, if so, how frequently.

Ans. I used to go past there twice every single day, and sometimes three times a day.

Int. 9. What reason had you to pass the house thus frequently?

Ans. I was living out.

Int. 10. What do you mean by living out?

Ans. Working—doing general housework in a house on Portland street, and I used to go there in the morning and back at night.

Int. 11. Were you frequently past the premises on the corner of Emerson and Myrtle streets during the day and during the months of April and May, 1880?

Ans. Yes. I used to go down to my mother's house every afternoon, and go past there.

271 Int. 12. While passing by these premises did you observe any workmen on or about the premises; and, if so, what were they doing?

Ans. I saw some men working there. They were digging down a banking and making it level; and then there were some men working building up a piazza and fixing up the fence.

Int. 13. About what time was this that you first noticed the work being done by these workmen on the premises?

Ans. I should think that it was some time after about the first week in May, 1880.

Int. 14. Did you notice any work being done on the piazza at any time previous to the first week in May?

Ans. Yes, I think I did. When they were digging the bank away they were building up the piazza at about the same time.

Int. 15. Were you passing back and forth and by these premises during the entire months of April and May, 1880?

Ans. Yes.

Int. 16. Then you mean to be understood as saying that these repairs on the premises in question were made during the entire months of April and May, do you?

Ans. Yes, as far as my judgment goes.

Int. 17. Do you remember of seeing Mrs. Burgess during the month of April doing any work on or about the premises; if so, what?

Ans. I saw her about the last of April. She was wiping off the windows, putting up lace curtains.

Int. 18. And why do you say that this was about the last of April?

Ans. Because it was about a week before she came after my father, and she came after my father about the first of May.

Int. 19. And were the repairs being made on the piazza about the time you say you saw her wiping her windows?

Ans. Yes, they were.

Int. 20. Do you remember of seeing Mrs. Burgess on the premises at any time after the time to which you allude in your answer to Int. 17; if yea, how often?

Ans. Oh, certainly; I used to see her nearly every single day.

272 Int. 21. Do you remember of seeing Mrs. Burgess in the month of April, prior to the time to which you allude in your answer to Int. 17; if yea, how often?

Ans. Yes; I couldn't exactly tell how often, but a good many times.

Int. 22. Was she with anybody?

Ans. I couldn't say about April, but she was in company with a young gentleman several times; I met them on Lake avenue in the evening, and I saw her going to ride with one of the gentlemen. They rode through the avenue when I came along.

Int. 23. How frequently did you see them riding out?

Ans. I never saw them but once driving out in the evening,

Int. 24. How frequently have you seen them walking together, and about what time was this?

Ans. I couldn't tell how many times; I met them quite often. It was right after they started to work there.

Cross-examination by E. P. BROWN, Esq., of counsel for complainant:

Cross-int. 25. Where did you live in Melrose in the months of April and May, 1880? Give street and number.

Ans. I lived at the late Mr. Charles Porter's, on Porter street; no number that I know of.

Cross-int. 26. Did your father live with Mr. Porter?

Ans. No, sir; he did not.

Cross-int. 27. What is your father's full name?

Ans. Richard Woods.

Cross-int. 28. Where did he live in the months of April and May, 1880? Give street and number.

Ans. Tremont street, no number, Melrose.

Cross-int. 29. Did you live with your father and mother in the months of April and May, 1880?

Ans. I slept at home.

Cross-int. 30. And did you go from your father's house to Mr. Porter's house every morning and return at night in the months of April and May, 1880?

Ans. I used to come home at night and go away in the morning, and sometimes go home in the afternoon.

273 Cross-int. 31. What is your father's business?

Ans. Works in gardens, and does labor around.

Cross-int. 32. What time in the morning did you usually go from your father's house to Mr. Porter's?

Ans. Between six and half past six, all but washing mornings, and then about five o'clock.

Cross-int. 33. What time was it when you returned at night?

Ans. Between four and six, only when we would have late dinners.

Cross-int. 34. You say that you noticed work being done on the house in the way of repairs on the piazza; was that work being done by carpenters, so far as you could see?

Ans. I should think they were carpenters.

Cross-int. 35. They were working with tools, were they?

Ans. They were building the piazza with tools.

Cross-int. 36. What sort of a looking person was it that you saw Mrs. Burgess with on Lake avenue, as testified to in your answer to Int. 23?

Ans. I couldn't describe him; I didn't take any particular notice of him, and only passed them by.

Cross-int. 37. What sort of a team was it?

Ans. It was an open carriage—I should think you would call it a wagon; a seat for two in it, and a place back where you could put a box or anything.

Cross-int. 38. In your direct examination you have spoken of several occasions when you saw Mrs. Burgess in Melrose, in or about the premises at the corner of Myrtle and Emerson streets; do you wish to be understood as saying that you recollect of seeing her before the repairs on the house commenced, or was it after the repairs on the house commenced that you saw her, as stated?

Ans. About the time the repairs was beginning, I should think. I saw her one afternoon.

Cross-int. 39. And all the other times were after?

Ans. Certainly.

Cross-int. 40. What was the color of the horse Mrs. Burgess had that evening?

Ans. It was a dark horse; dark brown, I think.

274 Cross-int. 41. When did you first have any interview with any person with a view of testifying in this case?

Ans. I don't just remember what it was; a little time before I came down the first time for examination.

Cross-int. 42. Who was the person that you saw?

Ans. Mr. N. L. Graffam.

Cross-int. 43. Does Mr. N. L. Graffam visit your house frequently?

Ans. He does not, only when he is on business.

Cross-int. 44. He is counsel for your mother, is he not?

Ans. Yes, sir.

Cross-int. 45. Were you requested to come here as a witness by Mr. N. L. Graffam?

Ans. Mr. Graffam came by my house and told me to come down and give my examination.

Cross-int. 46. Were you summoned here as a witness, or did you come voluntarily without summoning?

Ans. All the summons I got was Mr. Graffam telling me to come down.

Cross-int. 47. Have you been paid anything for attending here?

Ans. Yes, I have.

Cross-int. 48. How much?

Ans. A dollar.
Cross-int. 49. Have you any employment now?
Ans. Yes, sir.
Cross-int. 50. Where are you now employed?
Ans. Tobacco factory over in Charlestown.
Cross-int. 51. Doing what?
Ans. Stemming wrappers of the tobacco.

MARY F. WOODS.

Attest: H. G. ALLEN,
Special Examiner.

275 *Further Evidence for Complainant in Reply, taken pursuant to the Sixty-seventh Rule of the Supreme Court of the United States, in Equity, as amended, before me, Arthur B. Clapp, Special Examiner.*

Deposition of Charles R. Adams.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Oct.* 31, 1881.

Int. 1. State your name, age, residence, and occupation?
Ans. Charles R. Adams; age, thirty-five; residence, Providence, R. I.; carpenter.
Int. 2. Were you engaged in business as a carpenter in May, 1880?
Ans. I was.
Int. 3. Did the complainant, Christine J. Burgess, apply to you in the said month of May to do some work on her house in Melrose, Mass.?
Ans. Yes; she applied in March or April, but I was so busy I couldn't get down before May.
Int. 4. What time in May was it when you finally undertook the repairs on her property at Melrose?
Ans. I left Providence on the 18th, and commenced work on the 19th of May, 1880.
Int. 5. Did you or any of your workmen go to Melrose prior to the 18th of May, 1880?
Ans. No, sir.
Int. 6. Did you send any workmen to Melrose; and, if so, give their names.
Ans. I did. Dennis P. Barney, Thomas Dewhurst. Those two are all.
276 Int. 7. Did they both leave Providence for Melrose on the same day?
Ans. They did.
Int. 8. When did they return from Melrose?
Ans. Dewhurst returned June 2 and Barney June 5, 1880.
Int. 9. Do you know where Dewhurst now is?
Ans. I do not. I think he is in Baltimore.

Cross-examination (*de bene*) by N. L. GRAFFAM, Esq., of counsel for defendants:

Cross-int. 10. How long have you known Mrs. Burgess, complainant in this suit?

Ans. I think since 1877 or 1878.

Cross-int. 11. When were you first spoken to by Mrs. Burgess to do work on her premises in Melrose?

Ans. I think it was the latter part of winter, March or April, 1880; but I didn't send a man till May.

Cross-int. 12. Where were you when you were first spoken to with a view of going to work on the premises in question?

Ans. In Providence, R. I. I couldn't say whether it was at her house, at Mr. Burgess's store, or at my shop.

Cross-int. 13. Do you live near Mrs. Burgess's or Mr. Burgess's place in Providence, R. I.?

Ans. About three-quarters of a mile.

Cross-int. 14. Are you in the habit of seeing her every few days? State how this is.

Ans. Two or three times a month, perhaps, more or less.

Cross-int. 15. Then you mean to be understood that you do not see her very often at her home in Providence; is that what you mean to say?

Ans. I only see her when I have business with her, work to do; sometimes two or three times a week, then not for three or four weeks. It is impossible to tell; whenever there are jobs required about the house.

Cross-int. 16. Then you have no means of knowing whether or not Mrs. Burgess was at her home in Providence all the time during the winter or spring of 1880?

277 Ans. I know when they were doing the work in Melrose she went down there with the men.

Cross-int. 17. How long prior to her going to Melrose, referred to in answer to Cross-int. 16, was it that you saw her at her home in Providence?

Ans. I saw her the Sunday before they went; I went to her house to see if she was to start in the first train, and she wished it put off till Tuesday.

Cross-int. 18. Did you see her previous to the time referred to in your last answer; and, if so, when?

Ans. I saw her the week before; she was down to the shop several times.

Cross-int. 19. Do you know whether or not Mrs. Burgess was at her home in Providence during the entire month of April, 1880, and after the first week of April in that year?

Ans. There was one-half hour's work charged to the house in Providence, April 14, 1880. I don't remember doing any work at the house unless she was there. That is all I can answer to that question.

Cross-int. 20. Then you mean to be understood as saying that you cannot swear whether Mrs. Burgess was or was not at her home

in Providence during the entire month of April, 1880, and after the first week in April?

Ans. I couldn't swear.

Cross-int. 21. Mrs. Burgess may have been away from her home in Providence for one, two, and possibly three weeks in April, 1880, for aught you know, may she not?

Ans. She might possibly.

Cross-int. 22. She may have been at her home in Melrose during this time, for aught you know, may she not?

Ans. I have no means of knowing where she goes or what her business is.

Cross-int. 23. You understood, when she called upon you with a view to get you to do work on the premises in Melrose, that she was then making repairs on the premises, did you not?

Ans. That she intended to make repairs on the premises.

Cross-int. 24. You can't swear but what some repairs had already been made, can you?

278 Ans. No.

Cross-int. 25. You cannot swear but these repairs, some of them, may have been made in the month of April, 1880, can you?

Ans. I cannot.

Cross-int. 26. Did you go to Melrose at any time during the months of April or May, 1880, with a view of making repairs on Mrs. Burgess's premises? Answer yes or no.

Ans. No, I wasn't there myself.

CHAS. R. ADAMS.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of Dennis P. Barney.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Oct.* 31, 1881.

Int. 1. State your name, age, residence, and occupation.

Ans. Dennis P. Barney; age, forty-two; residence, Providence, R. I.; occupation, carpenter.

Int. 2. Were you in the employ of Charles R. Adams, of Providence, R. I., in the month of May, 1880?

Ans. Yes, sir.

Int. 3. Are you the Dennis P. Barney referred to in the testimony of Charles R. Adams, whom he sent to Melrose on the 18th of May, 1880, to do some repairs on the house of Christine J. Burgess, the complainant?

Ans. Yes, sir.

Int. 4. What other workmen, if any, went with you?

Ans. Thomas Dewhurst.

Int. 5. What day of the month was it when you and Dewhurst reached Melrose?

Ans. It was the 16th of May, 1880.

Int. 6. When you and Dewhurst reached Melrose, had any carpenter work been done on the house, the piazzas of the house, or on the fences about the house?

279 Ans. No, sir; not any that I could see. It showed no signs of anything having been done.

Int. 7. Had any painting been recently done upon the house, or any grading in the yard, or any repairing of the walks of the yard?

Ans. No, sir; I couldn't say positively about the painting, but there had been no grading or repairing of walks.

Int. 8. How long did you and Dewhurst remain in Melrose repairing the house and fences?

Ans. I remained until Saturday afternoon, June 5, 1880. Dewhurst returned to Providence Wednesday, June 2, in the morning.

Int. 9. How are you enabled to fix the date when you and Dewhurst went to Melrose, and when you returned from Melrose to Providence?

Ans. By the memorandum I kept at the time.

Int. 10. Do you wish to be understood as testifying that those dates were taken from your memoranda book, and the entries were made in that book at the time when the transactions then referred to took place?

Ans. Yes, sir; I do.

Int. 11. Did any other carpenters besides you and Dewhurst work on the premises while you were there?

Ans. No, sir.

Int. 12. While you were there, did you repair the piazza?

Ans. Yes, sir; I repaired two piazzas.

Int. 13. At any time while you were repairing the piazzas was there any man by the name of Patrick Finn employed to point up the underpinning of the house on the northwesterly side?

Ans. There was a man employed by Mrs. Burgess while I was there, but I couldn't say what his name was.

Int. 14. Was there more than one person employed in pointing up the underpinning of the house in the place referred to?

Ans. No, sir.

Int. 15. Did you pay this person employed to point up the underpinning when he had concluded his work?

Ans. I think I did; I won't be positive; and Mrs. Burgess gave me the money to pay him.

280 Int. 16. Had any work been done on the underpinning of that house at the time when you commenced work on the piazza?

Ans. No, sir; I should say not.

Int. 17. Having in mind the time when you went to Melrose, and the progress of work which you did upon the premises, what should you say as to the time when the man Finn, or whoever else it may have been, pointed the underpinning on the northwesterly side of the house?

Ans. It was done on the second week I was there. The week commenced Monday, May 24.

Int. 18. Did any person work on the underpinning on the north-

westerly side of the house while you were there, prior to Monday, the 24th of May?

Ans. I should say not; I wouldn't be positive.

Int. 19. How are you able to fix the time when, as you think, the work was done on the underpinning, in the week commencing Monday, May 24th, 1880?

Ans. I fix it only from recollection. I have no dates.

Int. 20. Was it necessary to take up the floor of the piazza in order to get at the underpinning at the places where the pointing was done?

Ans. Yes, sir.

Int. 21. Have you any way of fixing the date when the pointing was done, except from the time you commenced work on the piazza, and your general recollection of the progress of the work?

Ans. No, sir; I have not.

Int. 22. While you were engaged in doing the carpenter work on the place at Melrose, were there any other persons engaged in grading the grounds and repairing the walks?

Ans. Yes, sir.

Int. 23. Was there any person employed about the premises while you were there doing the carpenter work by the name of Taff?

Ans. Yes, sir; I think there was.

Int. 24. Have you an entry in your book made at the time in regard to this man? If so, read it.

281 Ans. I have an entry, "Pat. Taffe, 5 hours' work, Wednesday, 5½."

Int. 25. What did Pat. Taff do?

Ans. Wheeled rubbish from the lower part of the lot to the upper part.

Int 26. Was he discharged?

Ans. Yes, sir.

Int. 27. Who discharged him?

Ans. I did.

Int. 28. Did you pay him when you discharged him?

Ans. Yes, sir.

Int. 29. How much did you pay him?

Ans. I can't recollect.

Int. 30. What was the reason you discharged him?

Ans. Because he didn't earn his money.

(Counsel for defendants objects to this testimony of the witness being taken, on the ground of being incompetent, immaterial, and irrelevant.)

Cross-examination waived.

DENNIS P. BARNEY.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Deposition of Richard T. Atkin.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Oct.* 31, 1881.

Int. 1. What is your name, age, residence, and occupation?

Ans. Richard T. Atkin; age, thirty-six; residence, 58 West Newton street, Boston; stenographer.

Int. 2. Please state whether you know Taff, the witness who has testified for the respondents in this cause.

Ans. I do.

Int. 3. Did you see him recently, and have an interview with him? If yea, state when it was and where it was.

(Objected to, unless it appears that the interview referred
282 to was prior to the beginning of the taking of testimony or since it was closed; also on the ground that it was incompetent and immaterial.)

Ans. I saw him on the day of President Garfield's funeral—26th of September, 1881, I believe—at his home in Melrose.

Int. 4. How came you to have an interview with him, and for what purpose was it?

Ans. I was sent to Melrose to investigate the matter, and among the names of parties given me I got the name of Patrick Taff.

Int. 5. Did you reduce to writing in short or long hand, in his presence, what was said to you by him, in relation to the time when he worked for Mrs. Burgess, at Melrose? And, if yea, please produce it.

(Objected to.)

Ans. I did; I have it here, taken down in short-hand as he spoke it.

Int. 6. Please read what he said to you on that occasion, as you then reduced it to writing.

(Objected to, as immaterial and incompetent.)

Ans. "It was after the 17th of May, about Decoration Day; the Duffy boy was working with me, as also Hawkins; they worked for some days after I quit, as I only worked two or three days. There was a carpenter there from Providence at the time I was working there."

Int. 7. What was the question which you put to him, to which he responded as stated in your last answer?

(Objected to, unless it appears that the interview was prior to taking Taff's testimony in the cause; also as incompetent.)

Ans. I asked him if he had ever worked or done any work for Mrs. Burgess on the grounds at her house on the corner of Emerson and Myrtle streets; to which he replied he had. I then asked him whether it was in April or May, 1880; he said it was in the month of May. I then asked him whether it was before or after the 17th of May; to which he replied as above stated.

Int. 8. Did you have any conversation with him as to whether he had any means for fixing the time; and, if yea, what did he say on that subject?

Ans. I asked him if he kept any memoranda book, or book
283 of entry, in which he kept a record of the business he did; to which he replied that he did not—that he had nothing to which he could refer which would enable him to fix the time more definitely.

Int. 9. Did you have any conversation at any time prior to last Monday with Finn, a witness produced by the respondents, as to whether he had any memoranda by which he could fix the time when he worked for Mrs. Burgess?

Ans. No, sir.

Cross-examination waived.

RICHARD T. ATKIN.

Attest: ARTHUR B. CLAPP,
Special Examiner.

Third Deposition of Horace C. Burgess.

Direct examination by E. P. BROWN, Esq., of counsel for complainant:

BOSTON, *Oct.* 31, 1881.

Int. 1. Has your attention been directed to the question where your wife was on the 17th day of May, 1880? And, if so, please state fully where she was.

Ans. She was at home in Providence on that day; my attention was called to it in no other way than by knowing she was at home.

Int. 2. What was her condition physically during the latter part of April and the first part of May, 1880?

(Objected to.)

Ans. Her health was poor.

Int. 3. Whether or not within your knowledge your wife was in the house, and had a physician most of the time during the first seventeen days of the month of May, 1880?

(Objected to, as incompetent and immaterial, and also on the ground that testimony bearing on matters of this kind has been closed.)

Ans. Mrs. Burgess was troubled with the erysipelas in the face; sometimes she had a physician; sometimes I would go for medicine for her during the first seventeen days of May, 1880.

Cross-examination waived.

H. C. BURGESS.

Attest: ARTHUR B. CLAPP,
Special Examiner.

284 The following is the statement of the case and the opinion of the court announced on the twenty-third day of January, A. D. 1882 :

Statement of the Case.

Circuit Court of the United States, District of Massachusetts. In Equity.

CHRISTINE J. BURGESS
v.
PETER GRAFFAM *et al.* } No. 1427.

This bill, brought by Christine J. Burgess, of Providence, Rhode Island, against sundry citizens of Massachusetts, charged that the defendants, Graffam and Newhall, severally obtained judgments against her in Massachusetts upon pretended debts not justly due them of $28 and $30, respectively, with costs, and that they and the attorney and deputy sheriff and the other defendants conspired to deprive her of a house and land in Melrose, used by her as a residence in summer and worth $10,000, with no incumbrance upon it; that they carried out the conspiracy by selling the said estate, upon the executions, to the judgment creditors themselves for $73.10 and $81.21, respectively, without notice to her, and by keeping the sales from her knowledge until the year had expired which the statute allows for redeeming lands sold on execution; that Newhall then sold out to Graffam, who, with certain of the other defendants, took forcible possession of the house and removed and converted furniture and other personal property worth $3,000, and committed other trespasses; that the complainant had offered to pay to Graffam the amount for which the property had been sold upon the executions, with reasonable costs and charges, but that he had refused to take less than $750 for a release of his interest in the estate.

285 The bill prayed that Graffam might be enjoined from committing any waste and from selling the premises, and might be required to deliver them to the complainant.

The answer of Graffam denied all fraud, combination, and conspiracy, and averred that the judgments were duly obtained against the complainant after notice and appearance, and that the property had been duly and legally sold at auction; that the year for redemption had expired, and the title of Graffam had become perfect; that he had duly and properly bought Newhall's title, and was the legal and equitable owner of the estate; that all the proceedings were open and public, and the complainant knew of them, or might, with reasonable diligence, have known of them; that he removed and stored the personal property, as he had a right to do, and gave the plaintiff notice of the fact.

The answer further averred that Graffam had sold all his interest in the estate to Herbert F. Doble, of Quincy.

The other defendants answered, denying all fraud and conspiracy, etc.

The plaintiff amended her bill and made Doble a defendant, alleging that he was not a *bona fide* purchaser, and that he bought with notice.

E. P. BROWN,
BELVA A. LOCKWOOD,
For the Complainant.
A. A. RANNEY,
For the Defendants.

Opinion of the Court. January 23, 1882.

LOWELL, *J.*:

Of the actions against her the defendant had notice, and she cannot aver and prove in this collateral suit that they were not founded upon just debts. By a recent statute of Massachusetts the power of a judgment creditor to sell his debtor's lands at auction, which was formerly confined to equities of redemption, has been extended to unincumbered estates. St. 1874, ch. 188; Hackett *v.*
286 Buck, 128 Mass., 369; Woodward *v.* Sartwell, 129 Mass., 210. No notice is required to be given to the debtor unless he is found within the county. A notice must be posted in the town, and one in each of two adjoining towns, and must be published in some newspaper printed in the county. These notices are not intended for the information of the debtor, as is apparent from their character, and from the fact that they are equally essential when the debtor has had personal notice as when he has had none. Their office is to inform the public, and obtain bidders at the sale.

In the sale on Graffam's execution all the forms of law were complied with. It was made at the office of the sheriff, as is not unusual. There were no bidders excepting the creditor, and the sheriff did not adjourn the sale, as he should have done, if he had any reason to suppose that competitors would appear at the adjournment. I do not know that there was any hope of this, for the law requires no notice of the adjournment excepting a proclamation at the time and place of the original sale. I cannot agree that the sheriff stands in a fiduciary relation to the debtor. He is a mere agent or servant of the law, and must be protected if he has honestly carried out the instructions of the statute.

I do not find a conspiracy among these defendants, such as is charged against them. I think it probable that Graffam was angry with the complainant for her neglect and refusal to pay his small bill; that he hoped to obtain power over her, by a failure on her part to learn of the sale, in order that he might compel her to do what he considered right; that is, to pay him and his attorney handsomely, according to their own views of liberality, for their time and trouble and vexation. He might have followed methods more advantageous to the complainant. He might have levied
on her real estate by appraisement and extent, or, after
287 selling the realty, he might have paid himself from the rents and profits. He might have taken personal property. He might have warned her of the danger in which she stood. Graffam

says he did warn her, but it is very doubtful whether the conversation which he testifies to did not take place after the foreclosure was complete. If it was before that time it is the worse for him, because it was a totally inadequate warning, not unlikely to mislead her. This is the only evidence of any act of his which looks like concealment, but I do not think it was intended to deceive her, nor that it did, in fact, deceive her. I believe the truth to be that he did not feel easy to take this valuable estate, even after the foreclosure, until he had given her one more opportunity to pay the debt, and that finding her still unreasonable his conscience was appeased.

These several things that Graffam might have done he did not do; but whatever might be required of him by good morals, or good neighborhood, or a regard to the opinion of mankind, he was under no legal obligation to do any of these things, and, as I have failed to find on his part any positive act of fraud or concealment, or anything more than silence when the law required no speech, I cannot find illegality in his conduct, and of course there was no conspiracy on the part of the other defendants. I must, therefore, dismiss the bill as against the attorney, the deputy sheriff, and the defendant Newhall, who sold his judgment to Graffam, as he had a right to do, and the defendants who removed the furniture. If these persons are liable to suit it is in trespass or trover.

The only remaining questions are, whether Doble is a *bona fide* purchaser without notice, and whether the plaintiff can and ought to be permitted to redeem the estate.

By a recent statute of Massachusetts, a *lis pendens* is not to
288 affect the title to real estate, except as to the parties to the suit, and volunteers and persons having actual notice, until a memorandum containing certain particulars of the suit has been recorded in the registry of deeds, and no such memorandum was filed by the defendant. Whether this statute must govern the action of the circuit court in equity I do not now consider. Doble, in my opinion, is either not a purchaser, or he is one with notice. He bought the estate two or three days after the bill was filed for about one-fourth of its value; the deed does not contain the true date nor the true price; and he had a written agreement with Graffam regulating their respective rights in case of litigation with this plaintiff within three years. The litigation was already begun, to be sure, but he had notice that it was probable, and provided against that contingency. He is clearly a purchaser with notice, unless the whole contrivance was the cover of a sham sale, which I am inclined to think it was.

The bill is not framed as a bill to redeem, but all the facts necessary to such a bill have been pleaded and proved; the technical defect is that the complainant does not ask for redemption, nor offer to pay what is due. The court has full power to permit an amendment at this stage of the case if the facts authorize a redemption. Neale *v.* Neales, 9 Wall., 1.

The land was sold for about one-fiftieth part of its value, with all due form; but it is not usual to sell land for so small a debt when

there are readier means for collecting it by levy and extent, or by taking personal property. For this reason I do not think I ought to hold the complainant to have lost the estate by her negligence. She had no actual notice of the sale, and could have had none, except by some accident. She knew that her property might be taken to pay the debt, but there is no evidence that she knew that by the operation of law fifty times the debt was likely to be taken.

I hold, therefore, that through some failure of notice, not
289 imputable to the defendant Graffam, because he was not bound to give notice, and not imputable to the complainant, who happened to live in a distant city, she has lost her estate by a harsh and intentionally undisclosed act of the defendant, though a disclosure was not legally obligatory.

Courts of equity were instituted to relieve against such mischances. A very analogous case of relief is found in National Bank of N. A. *v.* Norwich Savings Soc., 37 Conn., 444. There a decree of foreclosure had been made by a court having jurisdiction, and a second mortgagee had notice by mail, as required by the statute, and the decree recited that notice had been given; but, as it had not been received, the foreclosure was opened after the full time allowed by the decree had expired.

There are many cases where statutory foreclosures are held conclusive in equity, but they are cases in which there was actual notice, and the only question was whether, when a statute has given ample time for redemption by parties having notice, anything short of fraud should be permitted to excuse a failure to act within the ample time allowed by statute.

I hold, therefore, that the plaintiff may amend within sixty days on these terms: That she shall pay all costs to the date of this decree, and a reasonable attorney fee to the counsel who conducted the case for the defendants. If this is done, she may redeem against Graffam and Doble.

Interlocutory decree accordingly.

290 UNITED STATES OF AMERICA, }
Massachusetts District, } *ss:*

I, John G. Stetson, clerk of the circuit court of the United States for the district of Massachusetts, in the first circuit, certify that the foregoing is a true copy of the record, of the opinion of the court, and of all proceedings had in the cause in equity, No. 1427, Christine J. Burgess, complainant, *v.* Peter Graffam *et al.*, defendants, in said circuit court determined.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court, at Boston, in said district, this twenty-second day of September, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

[SEAL.] JOHN G. STETSON, *Clerk.*

291 *Bond to Party on Appeal.*

Know all men by these presents that we, Herbert F. Doble, of Quincy, in the State of Massachusetts, as principal, and George D. Wildes, of Ipswich, in said State, and Frederick J. Fuller, of said Quincy, as sureties, are held and firmly bound unto Christine J. Burgess, of Providence, in said State of Rhode Island, in the full and just sum of fifteen thousand dollars, to be paid to the said Christine J. Burgess, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated the seventh day of July, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately at a circuit court of the United States within and for the district of Massachusetts, in a suit in equity depending in said court between said Christine J. Burgess, complainant, and Peter Graffam, Samuel M. Fairfield, Edward B. Newhall, L. Thomas Freeman, Warren Elliott, William Hallahan, Moses F. Eastman, William C. Dillingham, and Herbert F. Doble, defendants, decree was rendered against the said defendants, Peter Graffam and Herbert F. Doble; and the said defendants, Graffam and Doble, having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Christine J. Burgess, citing and admonishing her to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next.

Now the condition of the above obligation is such that if the said Peter Graffam and Herbert F. Doble shall prosecute — said appeal to effect and answer all damages and costs, if -he- shall fail to make — plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

HERBERT F. DOBLE. [L. S.]
GEORGE D. WILDES. [L. S.]
FREDERIC J. FULLER. [L. S.]

Signed, sealed, and delivered in presence of—
ALEX'R H. TROWBRIDGE.
BENJ. H. BRADLEE.

Approved. JOHN LOWELL,
Circuit Judge.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest: JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

Endorsed on cover: Massachusetts C. C. U. S. No. 79. Peter Graffam and Herbert F. Doble, appellants, *vs.* Christine J. Burgess. Filed 9th October, 1882.

117-180

Supreme Court of the United States.

PETER GRAFFAM ET AL., APPELLANTS,

v.

CHRISTINE J. BURGESS, APPELLEE.

IN EQUITY.

Assignment of Errors and Brief of Appellants.

The appellants assign the following as errors, to wit: —

1. A bill was brought, after the year allowed by statute for redemption had expired, for the purpose of impeaching and having set aside as void a seizure and sale of real estate on execution, on the alleged ground of illegality, fraud, and conspiracy, and also to obtain relief because of alleged trespass committed in getting possession of the property sold, and in the removal therefrom of certain personal property, with a prayer also for an injunction to restrain the parties from committing waste said to be threatened. The bill had failed, and the Court proceeded to adjudge a right of redemption in equity, and of its own motion granted leave to amend the bill to that end.

2. The Court below allowed to be filed, in pursuance of the leave given, improper amendments, and such as made the bill objectionable and defective under the rules and practice of equity pleading, for the reasons and in the particulars following, to wit: The appellee offered to pay only the amount of the judgment and the interest thereon, which was an inade-

quate and insufficient offer. The original bill was allowed to remain the same as before, with the same frame work, charges of illegality, fraud and conspiracy, touching the sale, with the same defendants, and the same prayers for relief; the only change therein made being the insertion of said offer, and a superadded prayer for redemption, and for an account of the rents and profits. It was made multifarious; was given a double aspect, one impeaching the sale, and the other being for redemption, with prayers diametrically opposed to each other, and resting upon inconsistent cases, and not in the alternative. It introduced a new claim as against only some of the defendants, necessitating, or rendering proper, the taking of further evidence thereon.

3. The Court below, in granting leave to amend, acted of its own motion alone, and allowed the amendments to be filed, without any notice to the defendants in the bill, and with no opportunity to be heard thereon being given. It then precluded them from answering and being heard, except as to the amount to be paid in redemption, and denied them the right to take and adduce further evidence upon the new claim introduced.

4. The Court erred in refusing to entertain, and in overruling, the demurrer to the amended bill filed by the appellants.

5. The Court erred in its decree, allowing the appellee a right to redeem, and in enforcing the same, there being no case for redemption, either under the original or the amended bill, or upon the evidence and proofs.

6. The year allowed by the statute of Massachusetts for the redemption of real estate sold on execution, had expired before the bill was filed, and upon the evidence and proof, the appellee was not entitled to redeem in equity, as found and decreed by the Court below.

7. The Court below erred in matter of fact in finding and decreeing that appellee had no actual notice or knowledge of the sale on execution, the evidence and proof being to the

contrary thereof; and as matter of law, if this was so, in holding and decreeing that this gave her a right of redemption after a year from the sale had expired, as against the provisions of the Statute of Massachusetts, limiting that right, and in the absence of any fraud or fault on the part of the appellants.

8. The Court below erred in holding and decreeing that the negligence of appellee was not a bar to her recovery in equity, upon the evidence and proofs.

9. The Court below erred in its decree as against appellant Doble, upon the evidence and proofs, he having bought the property in question in good faith and for a valuable consideration after the right for redemption had been lost.

10. If the Court below was right in decreeing a right of redemption as against the provisions of the Statute, and upon moral grounds independent of the same, it erred in not allowing and decreeing an adequate sum to the appellants upon the same grounds.

11. The Court below erred in denying the defendants in the bill in whose favor the decree was their costs of suit.

12. The decree of April 21, 1882, is erroneous in that it does not state the date to which the result of the account is found, and that it only says that appellants have been sufficiently paid by the rents received by them for their charges and expenses, without stating what the amount of either is. And the Court erred in not stating, and making a matter of record, what was allowed and disallowed by him in determining what was due and to be paid in redemption.

the alleged right of redemption. The real estate sold, was situated in Melrose, Mass. The appellee being at the time a

non-resident, the property was attached on mesne process, on January 24, 1879, and she notified thereof and of the suit, by an order of notice issued by the Court, and published in the "Malden Mirror." She employed counsel and he appeared to defend, was present on the day set for trial, but suffered a default, and appealed. The time for perfecting the appeal was extended, by consent, for four days, but this was not done, for no reason given. Final judgment was entered March 14, 1879. Execution issued March 21, 1879, the property attached was seized April 4, 1879, advertised and sold May 14, 1879. Appellee continued to hold possession of the house till June 22, 1880, when the purchaser made a peaceable entry, got possession, and removed the personal property and stored the same, with notice to her. She, refusing to compromise the matter on the terms proposed by appellants, proceeded, with full knowledge of the facts, to bring a suit in equity, the bill being filed July 10, 1880. The bill attacked and impeached the sale, on the ground of illegality, fraud, and conspiracy, and set up illegal and fraudulent conduct on the part of the creditor from the outset, and on his part and on the part of his lawyer, the sheriff, and all persons joining and aiding them, in the subsequent proceedings. The bill utterly failed of proof, and the grave charges made therein, were shown to be utterly without any foundation whatever, and to have been recklessly and wantonly made. The course pursued by the Court in granting leave to amend, and subsequently in regard to the amendments made, and the bill as amended, is the subject of objection and exception, as already indicated in the assignment of errors.

The claim for redemption rests entirely upon the alleged fact that the appellee did not have actual notice or knowledge of the sale. This fact is controverted upon the evidence and proofs, and its sufficiency as an excuse is denied, in any event, as a matter of law. There is no ground for dispute so far as this at least, to wit: That appellee knew of the attachment, appeared to defend and failed in her defence: she knew of the judgment, the issuing of the execution, endeavored in vain, after consulting with three Boston lawyers, to find grounds for a review, and a stay of the execution; was informed of the impending and proposed seizure and sale of the property

attached, unless the debt was satisfied, was amply able to pay the same and declined; she then left Boston for her home in Providence, Rhode Island, allowing the seizure and sale to take their course, without any further attention given to the matter on her part, and with no excuse shown for her neglect or failure in that regard. She only denies all knowledge of what occurred after that. But the appellants contend that the proof shows that the sheriff not only gave the notices required by law, but, as an act of grace, notified her also by mail of the sale as advertised; that the sale (among other things) was advertised in the "Malden Mirror," the same paper in which was effectually inserted the order of notice in the suit; that the judgment creditor, who was the purchaser of the property at the sheriff's sale, duly recorded his deed, and the sale was open and notorious; that she had, besides her attorney of record, two other Boston lawyers who were consulted, knew of the execution and the impending sale; that she had a tenant in occupancy of the house sold, and an agent in charge of the same all the time, was herself a business and capable woman, attending to her own affairs, and was frequently in Boston, and Melrose at the house in question, during the year, and had every opportunity and all needed means for full information, if she had seen fit to avail herself of the same; and that finally before the year from the sale had expired, she had direct and positive information of the sale from the purchaser himself, and was besought by him in vain to settle the matter up and avoid further proceedings. After possession was taken she had an opportunity to compromise the matter and save her property by paying enough to make the judgment creditor whole, but preferred litigation in an attempt to impeach the sale, and proceeded with her suit accordingly, with all of its false charges made. One Newhall had sued her also, making a second attachment and sale of the same property, and like proceedings were had, the two execution titles being united in Mr. Graffam, the creditor in the first suit. As the year allowed for redemption in case of the sale on the second suit, had not expired when the bill was brought, the appellants right to the property rests on the first sale.

The claims sued were small, the original debt in the first suit being only $28.29, the same being for days' work done by a mechanic in repairing the house in question, and the other debt was for only $33.41, contracted for personal services in letting the same, etc. Appellee had persistently refused to pay the same, on various pretexts, while amply able to do so, and the creditors were compelled to sue, or abandon the same, she having left the State and compelling a resort to her real estate. She had personal property in the house in the shape of furniture, but its ownership was not known, or assured, to the creditor, and the same proves to have been under a lease and in use by the lessee. The Statutes of the State gave the creditor the election of remedies, and he chose to attach, and levy upon, and sell, the house, as the cheapest, easiest, and most sure way of obtaining satisfaction, It will be seen, that at every stage of the proceedings, the creditors endeavored in vain to avoid the necessity of taking each legal step, and the course pursued was enforced upon them by the conduct of an obstinate, wilful, and refractory woman, who seemed to believe herself beyond the reach of the law, and who put her creditors persistently and perversely at defiance, perfectly reckless of expense and all consequences to herself and others. Glad as the creditors would have been to avoid litigation and trouble, they had no other alternative to pursue, unless they gave up their debts, which were of as much consequence to them, as her house was to her, and submitted to evil treatment otherwise. Being assailed with charges of gross fraud they had no other course to pursue than to defend themselves, to the end of the line in which she led them. This has subjected them to large costs and expenses, until the amount of money originally at stake, has swelled to large proportions. Determined not to submit to an adverse decision such as was made by the Court below, they were not deterred, by the large and unprecidented amount of bonds required for the appeal, from seeking what they deem to be their rights in the highest Court of the land. They have never heretofore shown any disposition to injure or oppress the appellee, but quite the reverse thereof, and it is believed that the appellee will never suffer any injustice at their hands in any

event, whatever provocation may have been given by her conduct in the past.

What the appellants ask is that the case as it stands, may be dealt with according to the rules of law and equity, and determined upon them irrespective of persons, each witness being treated as he may deserve. This Court has all the opportunities to judge of them, that the Court below had, as the exhibition of each witness comes alone through the record evidence, the same here as in the Court below.

ARGUMENT ON THE FACTS.

The dates of the writ, attachment, execution, seizure and sale, and of the filing of the bill, together with the notices given by the sheriff, appear of record on pages of the Record, in the exhibits annexed to the bill, and in the returns of the sheriff, which are agreed to be correct. We shall assume that it is incumbent upon the appellee, to establish affirmatively a sufficient excuse in equity for her failure to seasonably redeem under the Statute of Massachusetts, and when she seeks to do it by her own evidence alone, her credibility must be judged of and determined, in the light of her interest, and under rules of evidence, which are applicable to all witnesses alike, male or female. It will be assumed that this Court will seek only to satisfy its conscience and judgment, upon any disputed issue of fact, and not content itself with trying to find some plausible excuse for holding what they might desire from motives of benevolence.

The appellee testified early in the case, denying that she had actual notice or knowledge of the attachment or the sale of her property (Rec. p. 54, Ans. 39). But the evidence had not proceeded far before it was conceded of record that she did know of the attachment (Rec. p. 66, bottom). In cross-examination, after she had indulged in broad and sweeping general denials, she professes not to remember about employing and consulting with counsel, after the final judgment and execution, or what occurred as between her and them about the

matter (Rec. p. 58; Ans. 74, 78, 79). She claimed herself no privilege, when testifying about interviews with her counsel. When her attorney of record, Mr. Bryant, was being examined, she interposes a claim of privilege, and partially succeeds in getting him to decline answering questions (Rec. p. 66). When Mr. Fairfield testifies to writing her a letter about the judgment and execution, and what was proposed to be done unless she satisfied the same, she declines upon call to produce the same, with no excuse given (Rec. p. 113, Ans. 11). Her reply, with the envelope, having the regular post-marks thereon, is put in evidence by Mr. Fairfield, and the contents of his letter to her shown (Ex. A., p. 129; Rec. p. 114, Ans. 12). She does not appear as a witness afterwards, and deny the receipt of the letter, or her reply thereto, but puts her husband forward to swear that *he* did not know of the letter, and that the reply is not in her hand-writing (Rec. p. 160, Ans. 41–2). She seems not to be ready or willing to deny on oath that she received the letter, or wrote, or had written for her, the reply. It remains in proof that the original letter was written by Mr. Fairfield, and sent by mail, and that the reply came in due course of mail (Rec. p. 113, Ans. 10; p. 125, Ans. 116). She promised in the reply to go to Boston, and see about it, and it appears that she did go, and was there in consultation with her three lawyers on April 3d and 4th, 1879, one of the lawyers going and having an interview, in her behalf, with Mr. Fairfield on one of those days (Rec. p. 131, Ans. 4–7, evidence of Mr. Pickering; Ev. Mr. Lynde, Rec. p. 105, Ans. 25; Ev. of Mr. Bryant, Rec. p. 66, Ans. 20, 22). Her going to Boston at that time was manifestly in obedience to her promise contained in her reply, showing that she got the letter in question. She was then engaged in striving to find some grounds for a review, and a stay of execution, showing that she and her counsel knew of the condition of things then, just at the time when the execution was sent to the sheriff and the seizure was being made.

She tries to deny the interviews with Mr. Pickering. But he, her own counsel, swears to the same, produces the entries on his books, fixing dates and facts, showing that both he and she knew of the impending and proposed levy and sale, were

duly informed of the same, and she fully warned, by him, of her peril; and that she, not getting any assurances as to the prospects of a review, and stay of execution, went home to consult another lawyer there and did not return (Ev. Pickering, Rec. p. 133, Ans. 14, 15; p. 132, Ans. 7; Ev. Fairfield, Rec. p. 114, Ans. 15). She consulted Mr. Lynde also on the same subject, on April 3, 1879, and he proves the same by his oath and produces his books to fix fact and date, and she subsequently paid him his bill for what he did (Ev. Lynde, Rec. p. 105, Ans. 25; p. 107, Ans. 37). She no where denies this, on oath. Mr. Bryant, her attorney of record, testifies to her seeing him several times at his office, during the three or four weeks subsequent to the judgment, and consulting him also about a review (Ev. Bryant, Rec. p. 65, Ans. 8–12). She no where denies this, only says she does not remember what the interview was (Rec. p. 57, Ans. 57 to 62).

Mr. Dillingham, the sheriff, testifies about enclosing a notice of the sale as advertised in the Malden Mirror, in an envelope properly addressed, with postage prepaid, and sending it to her by mail, and that it never came back through the dead letter office (Rec. p. 146, Ans. 6 to 10). She does not meet this evidence by denying on oath, that she received the notice, nor give any reason why she could not, or would not be likely to receive the same. She calls her husband to say that such a letter did not come to his box, and that is all the refutation attempted (Rec. p. 162, Ans. 49). She seeks to show that she did not know of the sale, by showing that her husband did not hear of it (Rec. p. 48, Ans. 33), which is immaterial. He testifies that he did not hear or know of the attachment (Rec. p. 48, Ans. 33). But inasmuch as it is conceded that she did know of that (Rec. p. 66, end), and did not tell him of it, the same may be true as to the sale. If she did not tell him of one she would be just as likely not to tell him of the other.

She gives no excuse whatever for her not looking after the matter and learning of the facts, when ample means of knowledge were at hand. She had property, and it is preposterous, and she does not claim, that she supposed that her creditors had abandoned their executions, and would not pursue the remedy

further, after making the attachment, getting judgment and execution, and telling her and her counsel, that they were going to proceed further against her property. The very effort to get a review and a stay of execution, proves that she and her counsel apprehended and understood what would occur if the judgment was not satisfied. There were two suits and two executions, and she had been sued, and her property attached before, so she was not unused to the law (Ev. Rec. p. 119, Ans. 57; p. 91, Ans. 16). She attended to her own business affairs, and the blame cannot, therefore, be held to rest on others. The knowledge of her attorneys employed, as to the impending sale, was her knowledge in law and equity. Mr. Fairfield and Mr. Graffam, swear to going to see her at her house, in Melrose, Mass., before the year after the sale had expired. The latter swears to an interview with her then and there, in which he told her that the property was sold and that he was the purchaser, and asked her to fix the matter up, and save the necessity of further proceedings. She said she had brought no suit, and declined to talk with him further (Ev. Graffam, p. 137, Ans. 20 to 24; p. 139, Ans. 40. Ev. Fairfield, Rec. p. 115, Ans. 31 to 35; p. 126, Ans. 120 to 127).

The appellee does not testify and deny this interview, or what was said, but leaves the evidence without refutation on her part. If not true she could easily have so sworn. What does she attempt to do? The witnesses had not fixed the exact date, but said they knew it was within the year after the sale, a fact which they both would be likely to remember with certainty. They say they think some repairs were being made at the time. Appellee calls witnesses to show when certain repairs were made, endeavoring to show that they were made after June 1, 1880, thereby tending to control the date of the interview, not the fact or what occurred. But she fails of proof of this fact. She had herself testified that she was there making repairs in 1879, in April and May, 1880 (Rec. p. 54, Ans. 37; p. 55, Ans. 44–46). In her bill she swears to making repairs about May 1, 1880 (Rec. p. 5, 3d paragraph). Sampson swears to spending a week with her there in on his 880, when plumbing was being done (Rec. p. 171, Ans. she knew

If she herself will not therefore deny on oath either the date, or the fact of the interview or what was said, the evidence of Mr. Fairfield and Graffam must be assumed as true. Whether it was before or after the year had expired, it shows that she did know of the sale at that time, for she said she had brought no suit yet, and expressed no surprise. It shows that she had in mind the fact of sale, and was contemplating a suit. There would have been no occasion for a suit had no sale occurred, ~~unless it might be one for redemption.~~ It was doubtless a suit to get the sale set aside, as that was the course pursued when her possession was lost. Her repose and inaction, and the making of repairs, can be accounted for on that assumption.

How it can be found that her evidence alone, as against all these direct and specific facts, establishes her ignorance of the sale, it is difficult to comprehend. General denials are cheap and easy, but of little avail when notice and knowledge are thus proved, and she is unwilling and does not deny or disprove the specific facts sworn to by others, and they mainly her own counsel.

Couple all these facts with the legal presumptions on which the law rests, and the conclusion is irresistible. Mr. Justice Field, in Pennoyer *v.* Noel, 5 Otto, 714, has fully expressed the law on this subject.

It is preposterous to suppose, that a capable business woman, who had been aroused, and was alert and active up to the very day when the seizure was made, in a vain endeavor to get a review and a stay of execution, with full knowledge of the attachment, and of the execution and impending levy, went home and gave no further thought or heed to the matter. Mr. Pickering says she went home, after getting no satisfactory assurances from him, to consult her husband and another lawyer a friend of the family there (Rec. p. 133, Ans. 14). Whether she did do so or not, she does not testify. She does not swear that she forgot it even, nor give sickness, disability, or any other excuse for her non-action. She says she had no further communication with the counsel of the creditor (Rec. p. 60), although before judgment, she was in his office to see him three times (Rec. p. 115, Ans. 28). She went and

had interviews with the Clerk of the Court after suit was brought (Rec. p. 91, 17–20). She gives no reason for not having defended or perfected her appeal. She employs at large expense, and consults with, three Boston lawyers, to see how she "can stand trial on execution," and then goes to consult another lawyer at home. She spends much of the summer and fall of 1879, in the house at Melrose. The deed is recorded. The records of the Court, and the sheriff who served the writ and held the execution, were near at hand. The means of information were open to her. She gives absolutely no explanation of her conduct, if she did not have a thought of, or look after the matter. If the executions had not been levied, as proposed, she must have understood that they were out against her, unsatisfied, and she and her property still in peril. She was amply able to pay, as she admits in her bill, and as the evidence shows. Why such indifference, if she supposed the execution had not been levied? It is not explained. She had no right to suppose that the executions had been abandoned, as the whole prior conduct of the creditors indicated no such intention. She don't pretend that she made any inquiry whatever of the creditors or their attorney, or went to the Court or the sheriff to see how things stood. She cannot say that she supposed the furniture had been seized, or the rents and profits seized, for if so she must have known of that fact. She does not say that she supposed any other mode of levy and satisfaction had been adopted, so that she would not care to redeem. In fine, she swears to no misapprehension, mistake, or disability on her part, much less any artifice practised upon her which misled her, or induced inaction. She was not misled by the execution not being returned till July 3, 1880. The law did not require that to be done sooner (Welsh *v.* Joy, 13 Pick. 477). When she swears to ignorance of the sale, she therefore testifies to what is not true, as her only hope of relief from the consequences of her folly, or else she has some peculiar definition of the words notice or knowledge, in the light of which her denials must be charitably judged. In order to understand what sort of a person the appellee is, the Court has only to scan her conduct in the present case: (1,) as to the bills sued, before suit, in the light of the Ev. of Peter Graffam (Rec. p. 136), and of

the Ev. of Mr. Newhall (Rec. p. 143); (2.) in the way in which she resisted payment on execution and tried to get grounds for review after her counsel and herself had had every courtesy and indulgence, and when no reasonable excuse was pretended for the default and failure to perfect the appeal; (3.) in the employment of three lawyers, and desiring still to consult another; (4.) in her studied silence afterwards for a year and more; (5.) in her rebuffing the creditor and purchaser when he called upon her before the year had expired, and called her attention to the matter in order to avoid the disagreeable necessity of proceeding further; (6.) in her refusal to compromise and pay the purchaser enough to make him whole, as was offered by him, after he had got possession; (7.) in the reckless profusion of gross charges of fraud, fulminated against creditor, lawyer, sheriff, teamsters, etc., and sworn to in the bill in equity, without a shadow of foundation therefor, and when creditor and counsel had at every stage gone out of their way to get an adjustment and to avoid further proceedings. It is not contended that she is insane, weak-minded, or incapable, and was imposed upon. She is simply wilful, obstinate, and perverse. She seems to have no sense of justice toward her creditors, is reckless of all costs and expenses, if so be she can defeat them of their debts. She seemed to regard herself above the reach of the law, and all legal process, and would not believe the sale to be legal and valid, until the Court below so decided. She don't even pretend that she had bad legal advice in that respect, and was misled thereby.

Her conduct in repairing the house, and in not redeeming, seasonably was the result not of ignorance of the sale, but came from her own wilfulness, obstinacy, and folly, in disregarding the same, or from negligence of the grossest character.

An attempt was made to impeach the action of the appellants, but the same signally failed. Their only offense was in attempting to collect by law, an honest debt due a mechanic for days' work done on the house in question, and another for personal services in letting the same. The remedy pursued was the one which the law furnished. Every step taken was enforced by the action of the debtor, and was not taken until rendered necessary by her. Instead of harshness there was marked for-

bearance at each step. Alleged evil intentions are disproved utterly. None, at least, found expression in acts of commission or omission, and were harmless at all events.

The creditor was first assailed because of alleged bad work, then with charges of conspiracy and fraud, and as said by Lord Cairns, in Parker v. McKenna, L. R., 10 Ch. Ap. C. p. 123: "To a suit constituted like the present, it is impossible for the defendants to submit They must resist it, they must meet the allegations of fraud which it contains, and they have no choice but to follow the line on which the plaintiff may lead them."

The decision of the Court below did not relieve them altogether. What was allowed them as terms and otherwise was kept within the narrowest possible limits. The sum allowed for counsel was a reflection rather than a compensation. While the Court disregarded the statute as to time, on moral grounds, it ignored similar considerations in fixing the amounts to be paid for redemption. It disregarded the rights of the grantee of the purchaser. It left all the grave charges of fraud to remain in the bill unchanged.

The Court below indulged in some strictures upon the conduct of the creditors, having nothing to say against the conduct of appellee. It was very properly remarked, in Cameron v. Adams, 31 Mich., 426: "Courts of equity cannot assume any censorship to condemn parties for doing what the Court cannot prevent. They can only redress wrongs within their jurisdiction."

If this Court is disposed to disregard this rule, as did the Court below, they will find on close examination, no just ground for censure. The creditors should not be condemned, when they have pursued their legal remedy in a legitimate way; there is no use in going into the discussion of a question of morals not affecting legal rights. There is nothing particularly tender in

legal proceedings of the kind any way. Being in, the appellants feel justified in asserting and claiming their legal and equitable rights. Matters purely of honor and conscience, will be safe in their hands hereafter in any event, judging from prior conduct.

See Ev. of Mr. Fairfield, Rec. p. 115–120, Ans. 65.
Ev. of Mr. Graffam, Rec. p. 136.

The furniture was under written lease (Rec. p. 96), and its ownership does not appear to have been known to creditor. The Statutes of Massachusetts authorized the attachment, seizure, and sale of the whole property (Pub. St. Ch. 172, Sec. 1. with references to prior Statutes; Woodward *v.* Sartwell, 129 Mass., p. 210). Appellee being a non-resident, a resort to an attachment of property was the only resource for satisfaction. The election of remedies, was of one which was the easiest, cheapest, surest, and least injurious.

The creditor had elected to attach the house on mesne process, and the debtor should have supposed that the levy would be upon the same, as of course. When the debtor and her counsel knew all about the judgment and execution, and of the impending seizure and sale, and failed to proceed with the threatened attempt to get a review, the creditor and his counsel had a right to suppose that they would take heed of what was sure to follow as a matter of course, to wit, a seizure, within thirty days after judgment as required by law in order to save the benefit of the attachment. The officer was allowed to proceed in regular course, and he went out of his way to give notices *ex gratia*. Before the year expired appellee was called upon, reminded of the sale, and again besought to pay up. As she did not do so, but rebuffed the purchaser, he took possession by peaceable entry, removed the furniture, and notified her counsel thereof (Ev. Fairfield, Rec. p. 116, Ans. 39; Ev. Lynde, Rec. p. 106, Ans. 34–38). Even then the purchaser offered to compromise by accepting enough to make him whole (Ev. Fairfield, Rec. p. 117, Ans. 44–49; Ev. Lynde and Brown,

pp. 109, 81). The latter received the offer, promised to call again and report, but proceeded instead to bring the bill. The evidence of Mr. Brown, about alleged admissions of Mr. Fairfield, to the contrary of much of the above is unreliable and untrue (Rec. p. 81). It is controverted by Mr. Fairfield (Rec. p. 117), and is contrary to what the other evidence proves. It is incompetent as against appellents as evidence any way. Mr. Brown enacted the rôle of counsel and witness, swore to things as facts when they were only the impression and argument of counsel.

The evidence as to the title of Mr. Doble, shows that he bought the house in good faith and for a valuable consideration.

Ev. Doble, Rec. p. 67.
Ev. Fairfield, Rec. p. 120, Ans. 67–73.

ARGUMENT ON THE LAW.

First.

AS TO AMENDMENTS, ETC.

We submit that the Court below improperly granted leave to amend, then allowed improper amendments, and erred in the subsequent course pursued.

The appellee elected, with full knowledge of the facts, to treat the sale as invalid, and proceeded to have the same set aside accordingly, instead of seeking to redeem and setting up what was claimed to be a sufficient excuse for her prior conduct.

She failed in the bill with that aim, and it was too late then to take the other course. She took the chances of her election.

Ross *v.* Mead, 5 Gilm. 171.

The bill as amended has the double aspect of impeaching the execution title, asking it to be set aside, and of a bill to

redeem. It is not framed in the alternative. Such a bill is not allowable.

Smith *v.* Valence, Rep. Ch. 169 (2d ed.).
L. R. 4 App. Cases, 401, Bank *v.* Company.
Shields *v.* Barrow, 17 How. 137.
Hardin *v.* Boyd, 113 U. S. 756.

The holders of the execution title were alone proper parties to a bill to redeem, but all of the original defendants were left in the bill. If so drawn originally, it would have been a proper subject of demurrer.

The original bill rested upon charges of conspiracy and fraud, which had not only failed, but were shown to have been without a shadow of foundation. It should have been dismissed for that reason.

Troughton *v.* Binks, 6 Ves. 573.
Martinez *v.* Cooper, 2 Russ, 198.
Gordon *v.* Horsfall, 5 Moo. P. C. 393.
Inman *v.* Waring, 3 De G. & Sm. 729.
Johnson *v.* Fessenmeyer, 25 Beav. 88.
Crenver Mining Co. *v.* Willyams, 35 do. 353.
Bank of Australia *v.* U. Hand in Hand, etc., L. R. 4 App. Cas. 391.
Eyre *v.* Potter, 15 How. 92.
Price *v.* Barrington, 3 Macn. & G. 486.

It is not a case where the charges of fraud were only subsidiary to a case in equity otherwise, so as to come within the doctrine of

Bank *v.* Lempriere, L. R. 4 P. C. 572.

It will be seen that the bill sets up a scheme of fraud from the outset to the end, involving sheriff, lawyers, and teamsters, with a most reckless profusion of charges. It omits to set up the notice of the suit, the appearance to defend, and the failure to do so. The charges were absolutely untrue, and were shown to be so by indubitable evidence. No stronger case could be

presented for invoking and applying the rule of the English Courts.

The offer to pay in the amendment was limited and insufficient, being confined to the amount of the judgment and interest, without a general offer to pay what might be found due.

2 Jones on Mort., § 1095, notes.

The bill, as amended, was subject to demurrer.

Keene *v.* Wheatly et al., 4 Phila. 157.

The Court improperly precluded the appellants, in the changed aspects of the case, from taking and adducing further evidence to show the want of a sufficient excuse for the failure to redeem within the year, her actual knowledge of the sale, or that the want of it was through her own fault and culpable neglect. What had been introduced under the original bill was to refute the charges of fraud in the matter of the sale, and in what was alleged as *alia enormia*, committed in pursuance of the scheme of fraud.

What might be deemed proper for one purpose might not be sufficient for the other.

Neale *v.* Neales, 9 Wall., only covers the question of time when an amendment may be made. The recent case of Hardin *v.* Boyd, 113 U. S., has affirmed the doctrine of Shields *v.* Barrow, 17 How., and left it so it applies in full force to the case at bar. The amendment here did make a new case. The proper defendants in a bill to redeem were only Mr. Graffam and Doble. The bill, as amended, retained all of the numerous defendants in the original bill and the charges of fraud relating to the sale and the acts done subsequently. The bill was not so changed as to be in the alternative, but a prayer offering to redeem was only superadded to the existing prayer. The amendments did make it proper to adduce more evidence as against the new claim for redemption introduced, bearing especially upon the question of appellee's negligence. It was not a sufficient objection, that, on another issue open under the

original bill, some evidence had already been introduced upon the same subject. In proving that appellants did not deceive her about the sale, they showed that she knew of the sale, and was informed of it; but, beyond this, there was the other question of her negligence in not redeeming, which was broader in its scope and new in the amended bill. What was said in the answers, as to the title having become absolute, was but a conclusion of law, and in justification of the acts in taking possession and removing the furniture, complained of in the bill, and not on a claim for redemption, and did not enlarge the scope of the bill.

See Smith *v.* Woolfolk, in this Court, Oct. T., 1884.

Second.

AS TO THE MERITS.

The case presents for revision a decision of the Court below, which, so far as I can understand it, is this: While there was no fraud as to the sale, and it was valid, and, while there was no want of notice or knowledge on the part of the appellee that is attributable to any one but to herself, she is entitled to redeem notwithstanding, because she did not have actual knowledge of the sale, and the case is a hard one, and the conduct of the appellants was harsh,

It seems to counsel that the Court ignored settled rules of equity jurisprudence, and went upon what he deemed to be the *morals* of the case alone. What is said by Mr. Justice Story in 1 Eq. Jur., § 19, finds in this case an illustration of the evils which he therein depicts. The course pursued and the principles adopted "places the whole rights and property of the community under the arbitrary will of the judge, acting, if you please, *arbitrio boni judicis*, and, it may be *ex aequo et bono*, according to his own notions and conscience; but still acting with a despotic and sovereign authority." The fundamental doctrine of equity, so ably laid down by Sir Joseph Jekyll in Cowper *v.* Cowper, 2 P. Will. 753, has been ignored.

"The law is clear" (said he), "and Courts of equity ought to follow it in their judgments concerning titles to equitable estates; otherwise great uncertainty and confusion would ensue. And, though proceedings in equity are said to be *secundum discretionem boni viri;* yet, when it is asked, *Vir bonus est quis?* the answer is, *Qui consulta patrum, qui leges juraque servat.*" "Again, discretion is a science, not to act arbitrarily, according to men's wills and private affections." (Rook's Case, 5 Rep. 99 *b.*)

The title of the appellants rests on the provisions of statute law, which a Court of equity has no lawful right or power to ignore. Gen. Sts. of Mass., ch. 103, §§ 44, 59, gives the right to redeem, and prescribes and limits the terms and conditions on which this right can be exercised; and there is no law outside of the same which secures any right of redemption.

The State statute governs and binds this Court as a rule of property in the State of Massachusetts.

Brine *v.* Ins. Co., 96 U. S. 627.
Orvis *v.* Powell, 98 U. S. 176.

It is not in the power, or at least not within the rightful authority, of a Court of equity, to engraft upon the statute equitable exceptions which the legislature have omitted.

Webb *v.* Nightingale, 14 Allen (Mass.), 374.
McIver *v.* Ragan, 2 Wheat. 25.
Bank *v.* Dalton, 9 How. 526.
Cameron *v.* Adams, 31 Mich. 426.
Kendall v. U. S., 107, U. S., 125

It is only where there has been some extension of time by agreement, or some evil practice, fraud or unfairness, which served to prevent or to delay action to redeem within the time limited for that purpose, sufficient to create a case for equitable relief independently of the statute, that Courts of equity have authority to interfere and grant relief. No case can be found where an enlightened judge has ever done it otherwise. The

Courts in the following cases have all gone upon, and fully recognize, this doctrine: —

Wallis Heirs, *v.* Wilson, 34 Miss. 357.
Southard *v.* Pope, 9 B. Mon. 261.
Griffin *v.* Coffey, 9 B. Mon. 452.
Furgerson *v.* Smith, 7 Bush, 76.
Williams *v.* Williams, 8 Bush, 241.
Dupuy *v.* McMillan, 2 Duvall, 555.
Briscoe *v.* York, 53 Ill. 484.
Trotter *v.* Smith, 59 Ill. 240.
Chase *v.* McLellan, 49 Me. 375.

A parol agreement is held by some Courts to be within the Statute of Frauds, and not enough as against the statute.

Kistler's Appeal, 73 Penn. St. 343.
Smalley *v.* Hickock, 12 Vt. 153.
Chase *v.* McLellan, 49 Me. 375.

Otherwise, if artifice or influence is used.

Faust *v.* Haas, 73 Penn. St. 295.
Seichrist's Appeal, 66 Penn. St. 237.

The Court below seems to have been unable to find any case to the contrary. In the absence of argument on the question, he inadvertently fell into the error of relying upon the case of Bank of North America *v.* Savings Bank, 37 Conn. 374. But a glance at that authority shows that it was a case of opening a decree in a foreclosure suit, because of an accidental failure of notice sent by mail to a foreign creditor interested in the same. No one will question the power of the Court, or the propriety of its action in re-opening the decree in such a case in the exercise of its discretion. The Court had power to do it under the rules and practice of the State. Its proceedings and decrees were within its own control.

But the distinction between that case and one where a foreclosure has become complete by virtue of statute provisions, is wide and clearly defined in well adjudged cases.

In Webb v. Nightingale, 14 Allen (Mass.), 374, the Court by Foster, J., say: "Ordinarily, if not always, a statute bar, such as the foreclosure of a mortgage by entry and three years' possession, is conclusive both in law and equity; and this Court possesses no jurisdiction to engraft upon a statute equitable exceptions which the legislature has omitted."

The Court, in Cameron v. Adams, 31 Mich. 426, say: "Where a valid legislative act has determined the condition on which rights shall rest or be forfeited, and there has been no fraud in conducting the legal measures, no Court can interpose conditions or qualifications in violation of the statute. Courts of equity have large powers for relief against consequences of inevitable accident in private dealings, and may, doubtless, control their own process."

In that case, the very distinction now contended for is made.

In the last case, the Court go so far as to hold that a Court of equity has no power to extend the time for redemption on a statute foreclosure of a mortgage, although redemption within the time allowed for it by statute had been prevented by accident and misfortune or by unavoidable mental and physical disorder.

Bailey v. Flint 105 U.S. 247
Adam, v. Fuller, 106 U.S. 163

AS TO HARDSHIP AND HARSHNESS.

"Courts of justice should take care that they are not misled by the hardship of a particular case, or by the passion or prejudice which may be excited against particular individuals, to make a precedent which would run counter to well-established principles."

Bronson, Ch. J., 2 Denio, 32.

The hardship inflicted upon the appellants must not be lost sight of, if such considerations are to avail anything. Conduct, which was enforced by the misconduct of the appellee, is not a proper subject of complaint.

Cameron v. Adams supra
Heed v. Heed 94 N.Y. 243

AS TO INADEQUACY OF PRICE IN THE SALE.

If this consideration did not affect the validity of the sale, as it clearly did not, upon undoubted authority, and as found by the Court below, it certainly should not affect the statute limitation or enlarge the rights of redemption. It would only serve to render redemption easier and to stimulate the debtor into greater activity and promptness of action.

Jones on Mort., § 916, note 7.
Pomeroy *v.* Winship, 12 Mass. 522.
Buffum *v.* Deane, 8 Cush. 35.
Slater *v.* Maxwell, 6 Wall. 268.
Stratford *v.* Twynan, Jacobs Ch. R. 418.
King *v.* Bronson, 122 Mass. 122.
Cameron *v.* Adams, 31 Mich. 426.

Its only materiality would be as affecting probabilities upon other material issues.

The statute giving a right of redemption does not make it depend on the price paid, or enlarge the right if the price is inadequate.

AS TO WANT OF ACTUAL KNOWLEDGE OF THE SALE.

This claim stands absolutely alone in the case at bar, as the sole ground for equitable relief. It is a case where it is found and is clearly true, that, if there was a want of actual knowledge, it is not imputable to any fault of the appellants or any one else, unless it be that of the appellee herself.

We respectfully submit that that is not an excuse for the failure to seasonably redeem, sufficient to give a Court of equity rightful power to grant it after the year had expired.

The real estate being attached on *mesne* process, and the defendant having appeared in the suit and known of the attachment, she was affected with notice of all which followed in the levy and sale of the property attached.

Pennoyer *v.* Noef, 5 Otto, 714.

The Court in that case, in the opinion delivered by Mr. Justice Field, on page 727, say: —

"The law assumes that property is always in the possession of its owner, in person or by agent; and it proceeds upon the theory that its seizure will inform him, not only that it is taken into the custody of the Court, but that he must look to any proceedings authorized by law upon such seizure for its condemnation and sale."

This doctrine is re-affirmed in Heidritler *v.* Company, Oct. T. 1884., 19 Rep. 291.

In the case at bar, there is no controversy about the evidence that appellee knew of the attachment, employed and appeared by counsel to defend, and had her full day in Court.

It is also proved by plenary evidence, not in conflict, that appellee had notice of the final judgment by letter, to which she replied, promising to call and see about it the next week (ev. of Fairfield, Ans. 10; ex. at close of his evidence); that the execution, taken on March 21, 1879, was accordingly withheld from the officer till April 3, 1879; that she then came to Boston, saw the creditor's counsel on that or the next day through her counsel, Mr. Pickering, learned of the impending peril to her property attached, only threatened in vain a review, of the prospects and effect of which she was fully advised; did not try to get one, but left for home (ev. of Pickering, Ans. 4, 6, 7, 8, 9, 10 to 16, inclusive; of Lynde, Ans. 21, 25, 31; Fairfield, Ans. 15; Bryant, Ans. in cross-ex. 9, 21, 22).

This would conclusively affect the appellee with notice and knowledge. What she was bound to look out and have a care for, and could have learned on proper inquiry and by reasonable diligence, is the same in legal effect as actual knowledge.

Notice given according to law is presumed to have been received, and ignorance of notice or of law is no excuse.

Wells *v.* Child, 12 Allen, 330.
Jenny *v.* Wilcox, 9 Allen, 245.

In King *v.* Bronson, 122 Mass. 128, the Court say, in regard to a case to redeem land from a mortgage which had been sold

under a power of sale after advertisement: "The case does not find that he saw the notice as published or sent to him, or knew that a sale was to be made under the mortgage; but it is found that he knew from some source that there was to be a sale of the property or some interest therein, and, without making proper inquiry, carelessly assumed and believed that it was not to be a sale under the power contained in the mortgage made by him. He made no effort to ascertain the facts, and did not attend the sale. A mortgagor, who knows that there has been a breach in the condition of the mortgage given by him, and that there is to be a sale of the premises for some reason, and has not been misled by any act or want of good faith on the part of the mortgagee, and who carelessly assumes without inquiry that the sale is not under his mortgage, and fails to attend, is not entitled in equity to have the sale set aside."

The interview had between the purchaser and the appellee before the year expired, and the notice sent to her by mail by the sheriff as an act of grace, clearly prove actual and direct notice. She in no place denies on oath that she had the interview with Graffam, or the date or details of the same, or that she got the sheriff's notice (Graffam, Ans. 20, 21; Fairfield, Ans. 20; Dillingham, Ans. 6, 7, 8 to 11).

In her bill, she says she was there, and commenced repairs the first of May; in her evidence, that she was there in April and May; and Miss Sampson swears that she was there with her in April, 1879, and does not deny that the interview occurred.

We deny that actual notice was necessary, however. One statute provision authorizes the seizure and sale of real estate, and prescribes the requisites of a valid sale, notices, etc., on the ground that, if the law is complied with, this will affect the debtor and the public with sufficient notice (Pennoyer *v.* Noef, 5 Otto); and the other statute provisions prescribe the terms and conditions of a right of redemption given on the same assumption and theory. A Court of equity cannot step in and say that there must be something more. Such a doctrine would upset or endanger largely execution titles and destroy a valuable rule of property.

The court below.
Teig v. Erickson, 111,

Personal notice is not required in cases of sales under a power in mortgages, unless expressly stipulated.

Dyer *v.* Shurtleff, 112 Mass. 165.
Hurt *v.* Kelley, 43 Mo. 238.
Princeton L. & T. Co. *v.* Munson, 69 Ill. 371.

Ample provision is made by statute for absent defendants, by way of review, etc.

Public Sts., ch. 187, §§ 21, 22.

In order to sustain the decree of the Court below, this Court, as a Court of equity, must assume the power to over-ride statutes in the exercise of an unlimited discretion.

Third.

By General Statutes, ch. 103, §§ 44, 59, 27, a payment or tender was necessary within a year from the sale, and a summary mode provided for determining the amount conclusively (Gen. Sts., ch. 103, § 27). A tender was necessary.

Rothwell *v.* Gettys, 11 Humph. 138.
Spoor *v.* Phillips, 27 Ala. 193.
Loring *v.* Cooke, 3 Pick. 48.

If there was a right in equity to redeem after the year had expired, because the debtor was ignorant of the sale, it was at least her duty, upon discovery of the facts, if she proposed to assert that claim, to proceed and make a tender.

This was not done by the debtor. Her counsel only contended that the sale was void, and indulged in some ineffectual talk about a compromise of the whole controversy. Getting appellants' terms of compromise, a promise was made to see about it, and report thereon, which was not done.

Ev. Mr. Fairfield, Rec., p. 117, Ans. 44, 45, 47–51.
" " Brown, " p. 83–4, Ans. 5, at end.

The bill set up no tender and offer to redeem as having been made before it was filed; and it was too late in 1882, when the bill was amended.

Ross *v.* Mead, 5 Gilm. 171.

The offer in the bill was limited and inadequate.

Pub. St. C. 172 § 41 29

General St. ch. 103, § 32, applies only to suits within the year, and don't apply to Federal Courts.

Fourth.

AS TO APPELLEE'S NEGLIGENCE.

The Court below seems to have been so overborne with feelings of benevolence, or what he deemed a sense of natural justice, that he ignored utterly the fundamental doctrine of equity, which makes negligence a bar to recovery. He had no word of condemnation for appellee, who forced upon her abused creditor the necessity of doing what he did, with the only alternative of an abandoned debt and an assailed character as a mechanic and a man.

"Equity will not assist a man whose condition is attributable only to that want of diligence which may be fairly expected from a reasonable person. Duke of Beaufort *v.* Neald, 2 Cl. & F. 248—" 91 U. S. 55.

With the evidence and facts shown without conflict, it is too plain for argument that the want of actual notice or knowledge of the sale, if it existed, was solely the result of the culpable neglect of the appellee. If she did not give the matter her attention, after what she is conceded to have known, and learn what was done on, or with, the execution, when she was, as is admitted, amply able to pay it, she was most culpably in fault. The law made it obligatory upon her to be vigilant and look after the matter after the execution had issued; and, if she had done so, she would have learned and known all. She was called upon to show why she did not do it, before she could be held in any event to have shown a sufficient excuse i

King v. Bronson, 122,

overcome the statute. She gives no reason whatever — not a pretence of a reason — why she did not know, or inquire and learn, the facts. The law asks her, "Why not?" She answers only, "I did not." She alleges in the bill that the creditor did not intend to have her know them, and yet shows nothing done or said calculated to mislead, or to divert inquiry, or which did do so in fact. The proof is conclusive that no such intention was entertained even, much less exhibited by anything done or omitted to be done.

She must have known, or could have known, if she had chosen to inquire at any time, every fact noted in the bill, and that is equivalent to knowledge.

Badger *v.* Badger, 2 Wall. 87.

Had the appellee been a weak or feeble-minded woman, or under some disability bodily or mental, and unfair advantage had been taken of her, the case would have been different. But she is an intelligent, capable, business woman, owning the property in her own right, and being the "man of the house." She is not pretended to be insane. She is shown to be only devoid of a sense of justice, wilful, obstinate, and perverse, used to the law and litigious. The only question under this head is whether, upon her own showing, she shall be held to proper diligence, and have applied to her well-settled rules of law and equity, or be exempted from them because of her sex alone. The pretence is, and the Court is asked to believe, that an intelligent and capable business woman allowed an execution to be out against her, when possessed of large property liable to seizure and sale, and never took a step, lifted a finger, or made an inquiry about it, for a year and more, giving the matter no thought or heed, with all the means and sources of information at hand. It is preposterous, and amounts to self-stultification; and the Court cannot give it credence without stultifying itself. She was active about the suit up to April 4, 1879, the day when the seizure was made. Did she cease action then? If so, why? It was the time when she should have been most vigilant and active. Her quiescence after that proves that she was informed of what had been done, and intended to do just what she did do when occasion for action arose, to wit: attack the sale. She does not pretend that she intended to redeem at all.

Fifth.

The grantee Doble bought the property for a valuable consideration and in good faith after the year had expired, and should be protected at all events.

Ev. Doble, Rec., p. 67.
Ev. Fairfield, p. 120, Ans. 67 to 73.

Statute of Massachusetts protected him from the bill. Pub. Sts., ch. 126, § 13.

Sixth.

The case is narrowed down to this: Will the Court take care of a woman and relieve her from a misfortune which her own wilfulness, obstinacy, and folly, have brought upon herself? Will they set aside or enlarge a statute of the State, in order to do it? Individual property is important, but the maintenance of sound rules and principles of law rises higher in sanctity and importance. Appellee's property may be lost to her, perhaps; but a hard case should not destroy the law. It is not for the Court to enter into the adjustment of matters which are only the subject of adjustment among individuals as matters simply of honor and conscience.

1 Story, Eq. Jur., § 14.

In such cases as this, they would have not only to extend the time allowed for redemption on the one side, but enlarge the amount to be paid on the other side, so that appellants could get a proper allowance for all the trouble and expense to which they have been unnecessarily and wantonly subjected by the misconduct of the debtor.

The appellants have felt bound to defend their character from unjust aspersions, as well as to maintain their legal rights otherwise. The original debt, the subsequent costs and expenses, are now of great account, owing to the misconduct and gross

charges made on the part of the appellee. She seems to have cared nothing as to what amount she paid out, in order to defeat them of their debt.

Seventh.

The other defendants in the bill were entitled to their costs by statute, and were wrongfully deprived of them by the Court below. They answered separately and the cause of action as to them was dismissed.

Rev. St., § 824.
Crosby *v.* Folger, 1 Sum. 514.

Much of the evidence was taken to meet the charges made in the bill against the parties, in whose favor the decree was made, touching the sale of real estate and the removal of personal property. They were without fault and the bill was dismissed as against them. There is no good reason why they should be denied their costs if the Court had the power to do it.

A. A. RANNEY.

Eighth.

In any event, the Court should have stated in the decree of April 21, 1882, what he found and allowed as charges and expenses on the part of appellants, and what he charged them with as rents and profits. Appellants claims, as presented in the pleadings, were itemized and the items allowed, and the items disallowed should have been passed upon, and stated, and made a matter of record. This would have shown also the amount of rents received.

The decision of the Court in this matter was the subject of appeal and embraced in the general appeal, and the course pursued deprives the appellants of all benefit of the same in that regard. The Court insisted upon hearing the matter himself, without the aid of a master, and appellants were entitled to the result stated in such a way as would preserve the right of appeal. He was asked in vain to do this, so that questions raised could be properly presented to this Court.

The objection now raised is not captious or technical, but substantial. Appellants put in an itemized account with charges and expenses to the amount of about $3,000. The rents received were small, and as is claimed only about $125. They could not be reasonably expected to be large in so short a time, possession being taken June 22, 1880.

Whether the items charged by appellants should be allowed raised questions of law and fact, and they were entitled to have the record show the same and the findings thereon. The Court evidently found that the purchaser was not justified in taking possession, and removing the furniture, that an action at law would lie therefor, and accordingly allowed nothing for the charges and expenses thereof, and the care of the estate and expenses thereafter. This appears from the opinions and decrees. It is shown also in the action at law subsequently heard by the same Judge on *demurrer* to the answer, in which he quite improperly took and used in his decision his findings in matters of fact and law in the equity suit, from which an appeal had been taken.

Burgess *v.* Graffam, 18 Federal Rep., p. 251.

It is supposed to be the law, that one entitled to possession can make peaceably entry even while another is in occupation, and is not unlawful for him to resort to such means, short of employment of force, as will render further occupation by the other impracticable."

Cooley on Torts, 323, p. 58 and note.
Rollins *v.* Moores, 25 Me., 192.
Stearns *v.* Sampson, 59 Me., 568.
Allen *v.* Bicknell, 36 Me., 436.
Low *v.* Elwell, 121 Mass., 309.

In the present case, the appellee was not in personal occupation, and no force had to be or was used. The purchaser had his election to take possession peaceably, and make his occupation effectual, or proceed by writ of entry.

Appellee had notice of the sale and title certainly prior to the 22d day of June, 1880, when possession was taken, and still held on to the property. If the interview between her and Mr. Graffam was not until after the year expired, it was certainly some weeks before the 22d of June, so that her continued possession after that was clearly illegal and wrong. The entry and removal of property was therefore justifiable and appellants were entitled to their reasonable charges and expenses for the same and thereafter.

A redemption in equity, after the expiration of the year, entitled appellants at least to what in equity and good conscience was due, irrespective of the Statute. If the Statute is disregarded in one respect it can be in the other.

PETER GRAFFAM ET AL., APPELANTS,

v.

CHRISTINE J. BURGESS, APPELLEE.

APPELLANTS' BRIEF.

117-180

SUPREME COURT U. S.
FILED.
NOV 18 1885
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States,

OCTOBER TERM, 1885.

No. 79.

PETER GRAFFAM AND HERBERT F. DOBLE,

APPELLANTS,

v.

CHRISTINE J. BURGESS.

BRIEF OF APPELLEE.

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS, 24 FRANKLIN STREET.
1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 79.

PETER GRAFFAM AND HERBERT F. DOBLE,
APPELLANTS,

vs.

CHRISTINE J. BURGESS.

BRIEF OF APPELLEE.

In 1879, when the trouble began between these parties, Mrs. Burgess was, and for ten years or more had been, the owner of an unincumbered house and land, in Melrose near Boston.

In 1879, it was assessed for taxes at a valuation of $5,700, *Stantial*, p. 89; and this estimate by the authorities of a suburban town in Massachusetts, means that it was worth a good deal more.

Upon the evidence, its market value was at least $8,000. Mrs. Burgess valued it much higher. She had been offered $10,000 at one time, and $12,000 at another, for the property. It had been let, with the furniture, during the winter months, at various prices, from $125 a month, to $37.50. *H. C. Burgess*, p. 49; *C. J. Burgess*, p. 53: *Bornstein*, p. 172; *Wingate*, p. 171.

Mrs. Burgess was, technically, a citizen of Rhode Island, but she always lived in Melrose during about six months of each year, from June to December; and usually let the house and furniture for the remaining six months. *H. C. Burgess*, p. 46.

Mr. Faulkner had a lease which ended June 1, 1879; see p. 96.

Peter Graffam had an account against Mrs. Burgess, for work done on her house and interest, of $28.72, *record*, p. 28; Edward B. Newhall had an account for services as agent in letting the house to one Bornstein, and drawing leases, of $26 and interest for some years, making $33.15. *Record*, p. 30.

Mrs. Burgess had fair ground for supposing that Graffam's workmen had caused a leak in her house, *H. C. Burgess*, p. 46; *C. J. Burgess*, p. 51; *P. Graffam*, p. 137; and that Newhall's claim for a full commission was doubtful. See *Bornstein*, p. 171.

However this may be, she did have disputes with Graffam, and provoked him by what he thought unreasonable objections. He put

his bill into the hands of Mr. Fairfield, a lawyer of Boston, and Mr. Newhall's bill was afterwards given to Mr. Fairfield.

Fairfield brought actions on these claims; Mrs. Burgess was defaulted, and failed to take an appeal or to bring a writ of review, though she had contemplated doing one or the other.

Fairfield, acting for Graffam, took out execution, and elected to have the house and land of Mrs. Burgess sold under the Act of 1874, ch. 188, now Pub. Sts., Ch. 172, § 7: "All lands, etc., may, if the creditor prefers it, instead of being appraised and set off, be sold on the execution."

It was sold at the deputy sheriff's office in Malden, to Graffam for $81.21, exactly the amount necessary to satisfy his execution. *Record*, p. 22. The officer returns that he posted a notice in one public place in Melrose, one in each of the adjoining towns of Malden and Wakefield, and published notice in the Malden *Mirror*. *Record*, p. 101.

No person can be mentioned as having been present at the sale except the creditor and his attorney and the editor of the Malden *Mirror*. *Dillingham*, p. 96.

No notice was posted on the house; none was given to Mrs. Burgess, nor to her tenant; no flag was displayed; no notice to the well-known agent for the estate, B. W. Conant, who had often notified his agency by placards, etc. *Dillingham*, p. 95; *B. W. Conant*, p. 60.

None to the attorney of record; *Bryant*, p. 64.

Nor had any of these persons any knowledge or information of the sale, until after the year for redemption had expired. *Same references.*

Mrs Burgess occupied the house as usual during the summer and autumn of 1879, beginning June 1. *H. C. Burgess*, p. 46; *C. J. Burgess*, p. 48, etc., p. 52.

She made inside and outside repairs to the amount of $1,000 to $1,200, during the thirteen months after the sale. *H. C. Burgess*, pp. 48, 49; *C. J. Burgess*, p. 55.

Graffam lived within two miles of the property, kept constant watch of it, and knew of the repairs or some of them. *Fairfield*, pp. 114, 128. *P. Graffam*, p. 139. *H. C. Burgess*, p. 160. *Brown*, p. 82.

Fairfield took charge of all the proceedings in both cases, and caused the sales to be made. *P. Graffam*, p. 137. *Fairfield*, pp. 122, 124.

Fairfield caused a sale under Newhall's execution to be made, 19 August, 1879; p. 102, notices were given by posting and publication as in Graffam's case; first notice 16 June, 1879, p. 101; no notice was given Mrs. Burgess, though she was living in her house at Melrose, as usual, from June 1, 1879, onward, during the summer and autumn. *H. C. Burgess*, pp. 46, 47. *C. J. Burgess*, p. 52. And though the law requires personal notice if the debtor can be found within the county. Pub. Sts., C. 172, § 29. "The

officer shall give notice of the time and place of sale to the debtor, if found within his precinct."

Newhall had been her agent for letting the house, etc., *Newhall*, p. 143; and must have known that she always occupied the premises during the summer, and only let them in winter.

Graffam was acquainted with her habits, as we have shown.

Fairfield, the attorney for both, may be presumed to have had their knowledge.

The sheriff, who, of course, followed Fairfield's instructions, may not have known that Mrs. Burgess ever lived in her house in Melrose, and, therefore, might not search for her there, more than elsewhere. His search, however, cannot have been very diligent. This failure to give personal notice is significant. The creditor was the purchaser for just enough to satisfy the execution; pp. 101, 102.

The complainant had no actual notice of either sale. She and her husband both affirm this. *C. J. Burgess*, p. 54. *H. C. Burgess*, p. 48.

And the fact of her not redeeming, but laying out in repairs eight times the amount of both executions, is conclusive evidence on this point.

The deputy sheriff says that he enclosed to her a notice cut from the newspaper. But he doesn't remember how he addressed it. *Dillingham*, p. 146. And it is clear that she did not receive it. Dillingham says the letter was not returned to him from Washington; but does not say that there was a notice on it, that he wished it returned; nor, indeed, that it contained anything but a newspaper cutting; which, of course, would not be returned.

When she heard that her house had been seized under a claim of title, she was utterly surprised, and was prostrated by illness for two weeks.

To break the force of the apparent unfairness of their conduct, Graffam and Fairfield testify to an interview between Graffam and Mrs. Burgess in 1880, at Melrose, while repairs were being made there, in which he said something to her about the sale. They try to make it appear that it was before May 17, 1880; but are careful not to swear positively to the date. Will not say it was not in June, 1880. *P. Graffam*, p. 139. *Fairfield*, p. 126.

It is proved, however, by overwhelming testimony, that Mrs. Burgess was in Providence at the time which they intimate, rather than fix; and that the particular repairs which were then going on, that is, carpenter's work, on the fences, piazzas, etc., were not begun until about May 20, 1880. All the persons but one, who have any means of knowledge, swear to this. *Adams*, p. 192. *H. C. Burgess*, pp. 157, 198. *Barney*, p. 194. *Atkin*, p. 198.

Finn (p. 181), who thinks he worked there for one day in April, has contradicted himself, *Atkin*, p. 197, and is controlled by all the rest.

Even if the conversation took place a few days before the time expired, it is clear that it gave Mrs. Burgess no information. It

would seem rather calculated to put her off her guard, whether so intended or not.

Fairfield (pp. 115, 116) instructed his client to say that if his claims were not settled, he would have to take them out of the property.

Graffam, p. 137, says he said that he had bought the property; but the words are not given, and it is plain that the idea was not conveyed to her mind. It is probable that he said, in substance, what he was instructed to say.

However, this is immaterial, as this whole evidence is founded on a false date.

Graffam bought out Newhall's title in April, 1880, under instructions from Fairfield.

"Newhall had the right to redeem from Graffam, and as I was counsel for both, I stated to Newhall that he had the right, if he desired it, and told him and Peter Graffam also, that one had better buy the other out, and hold both claims. Newhall was not disposed to do it and Graffam was, so I settled the matter in that way." *Fairfield*, p. 128.

This action on Graffam's part is singular, as, if Newhall did not care to redeem, Graffam would have no occasion to pay him anything.

Graffam does not say what he paid Newhall, and does not produce the deed. It is clear that he paid all Fairfield's charges, in both suits; for, after the year had expired, Fairfield charged Graffam $210 for services. *Fairfield*, p. 122; while the only charge against Newhall was $16.73 (*Fairfield*, p. 124), which is evidently the taxable costs, with interest. (See Execution, p.

When we consider these circumstances, and the want of the notice required by law to a defendant within the county, it is not unfair to presume that the Newhall action was prosecuted in the interest of Graffam, and should be considered a part of the same transaction, and the failure to notify, was part of a scheme to prevent the appellee from discovering the sales.

More than a month after the year had expired, and while Mrs. Burgess was still making repairs, Graffam, watching his opportunity, when she was absent for a day, went in forcibly in the evening, stripped the house of its furniture, and had it carried away and stored. It was roughly handled. *Conant*, p. 62.

This bill was brought against all the parties engaged in that transaction.

After the bill was filed, Graffam made a deed to Doble of the property for eleven hundred dollars, and this deed falsely states the consideration to be five thousand dollars, and has a false date, and false date of acknowledgment. See *deed*, p. 98.

The evidence for the appellant is that Nelson L. Graffam, who is attorney for him in this case, and who had an office with Fairfield, had agreed to buy the property, and had paid fifty or a hundred

dollars to bind the bargain, and asked Doble to take it off his hands, which he agreed to do. *Fairfield*, p. 120. Doble went to look at the place with Nelson Graffam, but knew nothing about values or anything else, except what Nelson Graffam told him; *Doble*, p. 71; he had no acquaintance with Peter Graffam; he admits that he had knowledge of the bill in Equity the next day. p. 78.

He will not swear to dates; *Doble*, p. 68; but when the papers are produced it appears that Nelson Graffam paid $50 July 12, 1880. *Record*, p. 99.

Doble paid the remainder, viz. $1,050, July 13, 1880; (*Record*, p. 99); deed recorded July 14, 1880. *Record*, p. 99.

The name of Nelson L. Graffam had been written in the deed, and was erased, and that of Doble substituted on the day that Doble paid the money. $1,050. *Doble*, p. 77;

Fairfield and Peter Graffam both say that the acknowledgement was made but once, and that was after Doble's name was inserted. *P. Graffam*, p. 141; *Fairfield*, p. 121.

Doble's name could not have been inserted before July 13, 1880. The deed is dated 6 July, 1880; purports to be acknowledged 7 July, 1880. *Record*, p. 99.

This bill was filed 10 July, 1880. *Record*, p. 1.

Neither Peter Graffam, nor Nelson L. Graffam, nor Fairfield, are examined as to the *bona fides* of the deed.

Doble says he had some oral agreement by which the money, or part of it, should be returned him, if Mrs. Burgess recovered the property. *Doble*, p. 74. In another place he says that he was to pay $500 more in one year; p. 68. He afterwards says the agreement was in writing, and in the hands of Peter Graffam. *Doble*, p. 80. Counsel agreed to produce it. *Record*, p. 80. It is not in the record.

The Court found that Graffam had been exercising in an oppressive manner, his strict legal right, and that the sheriff, teamsters, etc., could not be held as conspirators. It was held that, under the circumstances, the complainant ought to be permitted to redeem.

Whether the appellants' acts be called unjust, unfair, oppressive or technically fraudulent, is of no consequence. The decree is all that we are called on to sustain; not the reasons for it. The decree is sufficiently favorable to the appellants.

Law.

The recent statute of Massachusetts passed for the first time in 1874, permitting unincumbered real estate to be sold upon execution, with merely formal notices (if the defendant is absent), must be understood to intend that an actual public sale shall be had, and something approaching the true value be obtained if possible; otherwise it will work the greatest injustice, as this case plainly shows.

When only incumbered estates could be so sold, there was, comparatively speaking, no such danger. The court records and the decisions show, that in most of these cases the difficulty was to obtain the amount of the judgment creditor's debt.

Massachusetts having now adopted the policy which had before prevailed in several other States, must insist, as do the courts of those States, on a fair sale, and an actual and not merely conventional publicity.

It has been decided repeatedly that gross inadequacy of price, sufficient to shock the conscience, is cause enough for setting aside a sheriff's sale, after the right of redemption has expired, or when there is none.

Some judges *say* that inadequacy is not enough; but such is not the language of this Court.

Byers v. *Surget*, 19 How. 303.

And those judges always find some other slight circumstance, such as a want of actual notice, a failure to adjourn when there were no bidders, insufficient publicity, which, together with the inadequacy, will authorize the foreclosure to be opened.

Sheriffs' sales and other judicial sales, as, for instance, under decrees, stand precisely alike.

Byers v. *Surget*, 19 How. 303.
Howell v. *Baker*, 4 Johns. Ch. 118.
Tiernan v. *Wilson*, 6 Johns. Ch. 411.

Hannibal v. *Brown*, 43 Mo. 297.
Blight v. *Tobin*, 7 T. B. Mon. 616.
Boyd v. *Ellis*, 11 Iowa, 101.
Stump v. *Martin*, 9 Bush. 289.
Allen v. *Steffen*, 18 Tex. 672.
Johnston v. *Shaw*, 33 Tex. 585.

The Sheriff should have sold in parcels
Tiernan v. Wilson 6 Johns Ch. 411 cases
Rowley v. Brown 1 Binney 61
King v. Thorp. 26 Iowa 283
Cunningham v. Cassidy 7 Abb. Pr. 183
ed 17 A.L. 726

In the following cases, the sheriff, though entirely innocent of bad intent, and though he had a full discretion, has been held to have misapprehended his duty by selling when there was no competition; or the place of sale was too far from the property; or too much land was sold for the price; or when the posting was not sufficiently public, etc. etc.

The very want of bidders is held evidence that there must have been a miscarriage.

Tiernan v. *Wilson*, 6 *Johns. Ch.* 411.
King v. *Platt*, 37 *N. Y.* 159.
Cowgill v. *Cahoon*, 3 *Harrington*, 23.
Nesbitt v. *Dallan*, 7 *G. & J.* (*Md.*) 510.
Sowards v. *Pritchett*, 37 *Ill.* 521.
King v. *Thorp*, 26 *Iowa*, 287.

Cranston v. Johnston 3 Vez 170 M.
The property seemed to have been so
so much to pay a debt as to get an es
Hamlin v. Quimby 46 Ill 96 - sim

A failure of actual notice, when every formal and conven notice has been given, will often induce a court of equity to o foreclosure, statuatory or other, if the sale has failed to pr the true value.

Nat. B'k N. A. v. *Norwich Sav. Soc.* 37 Conn. 444.
Drinan v. *Nichols*, 115 Mass. 353.
Wetzler v. *Schaumann*, 24 N. J. Eq. 64.
Kloepping v. *Stellmacher* (21 N. J. Eq.), 328.

Hamlin v. Quimby 46 Ill 96.

We submit that the new statute of Massachusetts above cited, which gives the election to the judgment creditor, to have a sale instead of an extent, should be so construed that if a creditor elects to sell an unencumbered estate for a debt of one *per cent* of its value, he is subject to an obligation even more stringent than the courts of equity impose upon a sheriff, to see to it that the sale is a real one, or that the defendant is present, or actually notified. Or he must enter immediately and take the rents. The rent would have paid both debts long before the year expired.

A mortgagee is required by the courts to exercise, not only the utmost good faith, but a reasonable business discretion, and to give actual notice often, even when the deed does not require it; and to take care that an actual public sale is held and something approaching the true value is obtained.

A sale with only one bidder cannot be called a public auction.

Chapman, C. J., in *Roche* v. *Farnsworth*, 106 Mass. 509.

See also,

Drinan v. *Nichols*, 115 Mass. 353.
Matthie v. *Edwards*, 2 Coll. 465.
Montague v. *Dawes*, 14 Allen, 369.
Hoffman v. *Anthony*, 6 R. I. 287.

Johnston v. Eagan 3. Tredell Eq. 330

Mere inadequacy:

Horsey v. *Hough*, 38 Md. 130.
Trustees v. *Snell*, 19 Ill. 156.

No case can be found in which such a sale has been upheld without actual notice, where there was sacrifice at all approaching that here suffered.

If, as some authorities declare, circumstances are required in addition to the inadequacy of price, or in addition to want of actual notice, open the foreclosure, we have the following facts which show a designed suppression of notice, and technical fraud.

The creditor knew that the debtor had no notice; that she was spending large sums for repairs; he bought up an equity without assignable motive except a bad one, as above shown; he undertakes to give a wrong date to his interview with Mrs. Burgess; he gives a false date to his deed to Doble; he neglects to enter and state the profits.

AMENDMENT.

The Court had power to permit the amendment.

Neale v. *Neales*, 9 Wall 1.
The Tremolo Patent, 23 Wall. 518.
Hardin v. *Boyd*, 113 U. S. 756, and cases cited.

No amendment was necessary.*

Thomas v. *Hebenstreit*, 68 *Ill.*, 117.
Langmate v. *Ledger*, 2 Goff, 157.

The alleged rule that relief will not be given if charges of fraud are not sustained does not govern this case. The true rule is that if *facts* are falsely alleged by the complainant making out fraud, the Court will sometimes refuse to give an alternative remedy. But mere epithets, however disagreeable, will not have this effect.

The facts are truly alleged in this bill, and the fraud and conspiracy are inferences. In such case, alternative relief will be given.

Archbold v. *Com. Charitable, etc.*, 2 H. of L. 440.
Eyre v. *Potter*, 15 How. 42.

Aldrich v. Wilcox 10 R.I. 405

In *Hoyt* v. *Sprague*, 103 U. S. 613, charges of the grossest fraud were made, and the defendants insisted most strenuously in the Circuit Court, that if these were disproved the bill must be dismissed; but the Court held otherwise, and proceeded to decide the case on its merits. It does not appear whether the point was taken in the Supreme Court; but BRADLEY, J., notices the fact of such charges, and proceeds to decide case on its merits.

Besides, the conduct of Graffam was so unjust and oppressive as to deserve the name of a fraud in equity.

JOHN LOWELL.
JONH LOWELL, JR.

* Because a court of equity will order the purchase money &c. to be repaid whether the bill offers it or not.

† see
Hughes v. Teeter 23 Iowa 547.

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Supreme Court of the United States.

PETER GRAFFAM ET AL.,

APPELLANTS,

v.

CHRISTINE J. BURGESS.

REPLY OF THE APPELLANTS.

A. A. RANNEY,
Of Counsel.

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS, 24 FRANKLIN STREET.
1885.

Supreme Court of the United States.

PETER GRAFFAM ET AL., APPELLANTS,

v.

CHRISTINE J. BURGESS.

REPLY OF THE APPELLANTS.

Not having appealed from the final decree, appellee can be heard only in support of the same, and in opposition to the assignments of error by appellants.

Mt. Pleasant *v.* Beckwith, 100 U. S. 527.

An appellee cannot take advantage of an error committed against him, unless he brings a cross appeal.

Chittendon *v.* Brewster, 2 Wall. 191.
Mail Co. *v.* Flanders, 12 Wall. 130.

The original bill, so far as it impeached the sale, with its charges of illegality, fraud and conspiracy, touching the same, was conclusively disposed of by the first interlocutory decree entered in accordance with the opinion (Rec. p. 202), the appellee having yielded to it without any exceptions or appeal taken, and converted the bill into one for redemption, as claimed by her. She joined issue on the added answer, contesting the right of redemption, filed a paper when she brought the money into court, referring to the opinion expressly conforming to the same, and making it a matter of record.

Rec. pp. 38, 39.

The opinion was made the decree in substance. The entry, "interlocutory decree accordingly," made it so, although a formal

decree was not extended on the docket. It was treated by and parties afterwards as such.

The final decree is distinctively and solely a decree for re tion, and must stand, if at all, as such.

If the bill, as amended, is to be treated as having a double a one aiming and asking to have the property restored as on a title, and the other asking for redemption because of an equ right, on the assumption that the sale was valid, the first must be held to have been adjudicated conclusively in the ab of a cross appeal. The final decree itself carries with it an a cation by implication, if not expressed, that the sheriff's sal legal and valid.

The brief filed by the counsel of the appellee appears to be fined almost exclusively to an attempt to impeach the sheriff as illegal and invalid, if it does not abandon altogether the decree awarding redemption. Appell e cannot be permitted to shift her ground.

While it may be true that on the first aspect of the bill, if cient in averment of fraud and sustained by the proof, the could have set aside the sale and imposed terms, either equiv to those required for redemption or otherwise, yet not h done so, but having decided adversely to that claim, and by a decree awarded redemption on other grounds, this court cannot sustain the final decree, on the ground that the court below properly have done that.

If, however, the Court overrule this contention, it is res fully submitted that the bill could not be maintained on the aspect of the same upon any alleged or proved ground.

The original bill asked for the restoration of both the real personal property, and the answer contained a demurrer fo want of equity jurisdiction (although that was unnecessary). allegation is that the purchaser had obtained actual and exc possession of the property, and still held the same; and that so, the remedy was by ejectment or writ of entry, unless actua real fraud, not colorable, was alleged and proved, which wa done.

"A court of equity will not entertain a bill to recover possession of land, where no necessity exists to prevent vexatious suits, or an injustice irremediable at law."

Hipp *v.* Babin, 19 How. 271.
Lewis *v.* Cocks, 23 Wall. 466.

"A party cannot by a colorable suggestion of fraud, account, etc., use such a bill in place of the common law remedy of ejectment." SWAYNE, J., in case last above cited.

This case, like that, seems to be an action of ejectment in the form of a bill in chancery. The bill alleges a void sale, and a possession in the purchaser. If a sale was unauthorized, or made without the requisite notices, as alleged in the bill, it is simply void, and an action at law is the remedy.

If the record shows a valid sale in form, and there was real fraud, not colorable, the party may proceed in equity.

Slater *v.* Maxwell, 6 Wall 268.
Cocks *v.* Izard, 7 Wall. 559.

The bill sets up no fraudulent acts, nor acts which constitute a conspiracy, only illegality of sale and a non-compliance with the law as to giving legal notices, and a fraudulent conspiracy not to give notices of the sale, which the law did not require.

A bill for relief on the ground of fraud must be specific. It is not enough to charge in general terms that a transaction is fraudulent; the facts constituting the fraud must be stated. MCCRARY, J., in the *Reporter*, Vol. XII. 353.

Story, Eq. Pl. 251, 428; Kerr on F. & M. 365.

None are alleged in the bill, only a conspiracy to prevent complainant knowing of the sale, without any acts done to that end. A conspiracy not to give notices, which the law did not require, — in other words, only a want of sufficient courtesy, — is no conspiracy which the law condemns or recognizes. Much less can a bill in equity be maintained for a redelivery of personal property. The bill had a perfect jumble of causes of action, personal and real,

as to a part of which at least a court of equity can take no diction of.

The appellee's brief does not even claim that any fraud in l in fact was committed. It is called "technical fraud," that is, able, I suppose, or just no fraud at all, as known to the law. is meant, I suppose, is something not exactly moral or in accor what is called good neighborhood, or a want of a proper r to the opinion of mankind, as it is termed in the opinion Court. The Court will search the record in vain for any pr real or actual fraud in law or fact. The counsel here an court below have failed to find any which is urged. No fraud act is alleged in the bill even, except an alleged conspiring tog to prevent appellee from getting notice of the sale, with no w ful acts of commission or omission set up. There was no delil concealment, when the party was under any obligation to s either set up or proved.

The evidence shows no waste which was threatened or likely committed; and if a Court of Equity would interfere at all, i not do it, while the proof fails to show any cause for it.

The law of Massachusetts must govern, as the case involves of property pertaining to real estate. It is not for this cou interfere with and override the action of the sheriff who mad sale, because of any failure to exercise a proper discretion as t journing the sale, he having complied with the requirements law, and being guilty of no fraud in the premises. His good appears by the fact that he sent an *extra* notice, not required by by mail to the appellee, even if she did not get it.

King *v.* Brown, 122 Mass. 122.

No adjournment was called for and would have been of no avail. The sheriff was the servant of the law, and carefully com with all of its requirements, and the whole proceedings were cl regular and legal.

Sykes *v.* Keating, 118 Mass. 520.
Sanborn *v.* Chamberlain, 101 Mass. 409.
Hackett *v.* Buck, 128 Mass. 369.
Woodward *v.* Sortwell, 129 Mass. 210.

As to notice required: —

Genl. St., c. 103, § 41.
Com. Rev., Vol. IV. p. 280, §§ 28, 29.
Parker *v.* Abbott, 130 Mass. 25.
Welch *v.* Macomber, 130 Mass.
Owen *v.* Newell, 128 Mass. 427.

The execution need not be returned on return day. Sufficient if returned before offered in evidence.

Welsh *v.* Joy, 13 Pick. 477.
Walsh *v.* Anderson, 135 Mass. 65.

Appellee was not deceived or misled by want of an earlier return of the execution as affecting her redeeming, because she does not pretend that she ever looked or inquired. The sheriff's deed was delivered, and duly and reasonably recorded, giving full information of what had been done, and this was public and accessible in the registry of deeds.

The sale was made at a proper place, and where it was usual to sell. Ev. of Bayley, p. 145; Ev. of Dillingham, p 146.

The creditor had his free election under the law as to what property, or what part of the property, he would have sold, and it is straining a point to say that he should have told the debtor what his election was, or was going to be. The house was indivisible, and the lot only one, and what was done was usual and proper.

Before Statute of 1874, c. 188, unincumbered real estate had to be set off, while equities of redemption could be attached and sold. By that statute it could be sold only in like manner as the right to redeem mortgaged land could be sold.

129 Mass. p. 214.

We have considered this matter of the sale. But we insist that the validity of that is not an open question here and now, and that all the cases cited by appellee on this subject are impertinent, and that the sale is not to be impeached now, when the decree will not stand on the other aspect of the case, as a decree for redemption.

Under the statute of Massachusetts, the right, title and interest of

the debtor being rightfully attached on the writ, "*the officer must sell the entire estate, which is at the time of the beginning of the levy bound by the lien of the attachment, etc.*

Endicott, J., 129 Mass. 213.

Hackett *v.* Buck, 128 Mass. 369, there was a subsequent attachment, here and abandoning the prior attachment and levying on a part of the estate would have sacrificed the lien by attachment.

The case of Aldrich *v.* Wilcox, 10 R. I. 405, arose under the peculiar statutes of that State, admitting of the sale of real estate only in certain events.

It was a bill to set aside a sale, not for redemption. It was not a case like the one at bar, where the property sold was *one* lot with a dwelling house thereon, which was indivisible. Statutes of Massachusetts differ from those in Rhode Island, and those involved in the cases cited therein.

We come back, then, to the real and the only proper subject of controversy here.

As to the amendment of the bill, appellee's brief contends that the bill alleged no acts of fraud, and that the Court can administer the alternative relief asked for, although the bill failed in its first aspect, and without striking out the charges of fraud. Allegations of fraud and conspiracy were made in the original bill touching the sale, and failed utterly of proof. They cover the matter of redemption, and equally fail of proof, and were also retained in the amended bill without change, and not all stricken out by the amendment. The case seems to come within the rule of the English cases cited in the appellant's brief, and that of Eyre *v.* Potter, 15 How. 42.

Hoyt *v.* Sprague, 103 U. S. 613, does not overrule this case. The point was not taken or argued in this court. The charges of fraud there were not necessary to the maintenance of the case; but there was a case without them, as in some of the cases cited in my original brief. The Court, in L. R. 4 Appeal Cases, 401, in case of Bank *v.* Company, has considered and dealt exhaustively with the whole subject. By the doctrine of Archbold *v.* Commissioners,

etc., 2 H. of L. 440, the proper course to pursue was to dismiss that much of the bill as charged fraud not proved, if subordinate only to what was enough otherwise to sustain the bill. Such is the doctrine of Bank *v.* Lempriere, L. R. 4 P. C. 572.

The rule by which the right of redemption is to be judged of is well stated in Herman on Executions, Sect. 263, and is supported by the authorities: —

"The right to redeem land after a sale on execution is not perfect, and cannot be enforced in equity until there has been a full performance of all the statutory requirements, or a valid and sufficient excuse for non-performanee, without any fault or neglect; and where such excuse is alleged, the excuse must be accompanied with an offer to perform all that the statute requires. The statute being peremptory, it cannot be disobeyed or disregarded, but all its requirements must be strictly complied with, as the right to redeem is the creature of the statute."

The Court of Appeals of New York, Weed *v.* Weed *et al.*, 94 N. Y., lays down the same doctrine: —

"The title has been acquired under the law, and a court of equity cannot divest legal titles, except in accordance with its settled and acknowledged jurisdiction. It cannot, on account of the hardship of a particular case, or because in a general sense it may deem it inequitable that the appellant under the particular circumstances should insist upon his legal right, subvert a title fairly acquired under a regular sale or execution, without fraud, concealment, artifice, imposition or undue advantage on the part of the purchaser. She took the risk of the sale, and the Court cannot relieve her from the consequences of her mistake."

The well-settled doctrine is that a right of redemption from a sheriff's sale on execution is given by and rests exclusively upon statutes, and is not, like the redemption of mortgages, a subject of general equity jurisdiction, the statutes alone giving this right, and providing the terms and conditions on which it may be had, and in accordance with which it must be exercised.

White *v.* Crow, 110 U. S., and Hay *v.* Baugh, 77 Ill.; Cameron *v.* Adams, 36 Mich.; Weed *v.* Weed, 94 N. Y.; Webb *v.* Nightin-

gale, 14 Allen, 379, are strong authorities of a binding character in support of the general doctrine laid down.

Appellee's brief does not controvert the law as thus laid down, neither does it deal with the evidence to show that a case is proved which comes within the same; but it substantially avoids it, with only a general reference to slight portions of the evidence, bearing more especially upon the first aspect of the bill touching the sale.

It contents itself with referring to appellee's general denial of actual knowledge of the sale, and ignores all the evidence which discredits her and proves the reverse thereof, as set forth in my original brief. It cites only on the question of redemption the case of Bank *v.* Society, 37 Conn. 444, while the other cases refer to setting aside sales. That case has been already dealt with in my other brief.

It takes the ground that the bill did not need amendment, because the Court might have set the sale aside and administered equivalent relief, while the rule of equity pleading and practice is as was held by the court below. There must be a case stated for redemption, an offer to redeem and pay what is due, and when necessary an averment of a tender, and a proper prayer for relief. The original bill contained neither.

The case of Thomas *v.* Hebenstreit, 68 Ill. 117, was a bill to set aside a judgment and sale, and that was what the Court decreed upon terms, not as a redemption, but as an annulling of the sale, because of gross inadequacy of price, and because the sale was *irregular, no certificate of levy being* filed as the law required, and a *false* certificate of purchase being filed. Because the Court set aside the sale on terms, did not make the case one of redemption from the sale, like the amended bill and decree in the case at bar. Had there been as here no case calling for the setting aside of the sale, and the Court had first so decided and decreed, and the party had then gone for redemption, calling for the application of different rules and principles of law, then there would have been some analogy between the two cases. Because the Court set the sale aside on terms equivalent to redemption, did not make it a case for redemption as such, either in statement, prayer, or the nature of the relief.

In Hay *v.* Baugh, 77 Ill., approved in 110 U. S. 183, the Court held that a sale should not be set aside after the time for redemption had expired, unless a strong case of fraud, oppression or wrong was proved. In White *v.* Crow, the Court say: "The appellant failed and refused to redeem the property within the time limited by law, and therefore lost the right to redeem, unless he can show some fraud or wrong on the part of the defendants by which a redemption was prevented." It does not appear whether the bill in that case was framed with a double aspect in the alternative, so that a redemption could have been allowed if a case for it had been shown, although the statement of the case seems to show an equivalent claim. But the opinion would seem to indicate that both claims were made and were open under the bill and pleadings. It seems to hold that the public records were enough to give notice to the parties in interest.

In the appellee's brief there is no contention that a strong case of fraud is proved, or even that there was fraud in fact or fraud in law. It speaks only of "technical fraud," and bases that claim on grounds that do not show even a colorable fraud.

I do not find any evidence in the record which shows, as is claimed, a designed suppression of notice, or any fraud, technical or colorable even.

The positive and uncontradicted evidence is right the other way. (Rec. p. 120, p. 139.)

When the counsel, sitting as a court, found that any failure of notice was not imputable to defendant Graffam (p. 202), he was right, and the brief is wrong now.

Silence when the law did not require him to speak, or a want of good neighborhood or good morals, does not amount to wrongful suppression or deliberate, culpable concealment. Mr. Graffam was under no legal obligation to speak and give further notice. He supposed and had good reason to suppose she knew of the sale already.

There was not even a want of good neighborhood or good morals, or of a proper regard to the opinions of mankind, if he had reason to suppose and believe that appellee already knew of the sale and of her right to redeem, as upon the evidence he certainly did believe,

and had reason to believe. This is demonstrated in my first brief. It is shown by the fact that he and his counsel took pains to get a team and drive to Melrose to get an interview with appellee, as they say, before the year had expired. The date only is in dispute. It makes little difference as bearing upon their intention as to whether it was before or after that date, because when they did go, Mr. Graffam spoke of the sale and of his being the purchaser, and expressed a wish and made an effort to get her to fix the matter up, and avoid further proceedings as against the property, showing no disposition to conceal the facts or take any advantage, but the reverse thereof. He had waited nearly a year for her to redeem, supposing she would do so, of course, and not choosing meanwhile to annoy her by interfering with the property or the rents and profits.

Six weeks after the year expired were allowed to pass by before possession was taken, and it was done then because the only other alternative was an abandonment and an entire loss of the satisfaction of the debts, costs and expenses incurred, and it was forced. He found that she would neither redeem nor bring suit to test the title. The brief is not borne out by the proof, when it says Mr. Graffam falsified about the date of this interview at Melrose. In the opinion of the Court, it is stated that the proof left it in doubt as to whether the interview did not occur after the year for sale had expired. Now, in his mind as counsel, it was so clearly after, that Mr. Graffam must be taken to have given intentionally a false date, indicating a designedly false witness and a fraudulent purpose. This only shows to what straits the counsel is driven in the argument, and what imaginary straws he is picking up. Mr. Graffam, while he says the interview was before the year expired, does not fix the exact date as he might easily have done if dishonest. He says he thinks, but is not certain, that repairs were going on at the time. Thereupon appellee, instead of testifying herself and fixing the date, proceeds to call witnesses to show repairs made after May 20, 1880. But unfortunately for the contention of her counsel now, she had sworn in her testimony previously given in this case (Rec. p. 55), that she was at the house making repairs in September, October, November, 1879, and in April, May and June,

1880. In her bill under oath she had stated that she began repairs about May 1, 1880 (Rec. p. 5). Miss Sampson, one of her witnesses, swears (p. 174) that she spent one week with her in April, 1880, at the house, during which time a plumber was engaged in making repairs. Mr. Fairfield swears to the coldness of the weather, indicating early spring and to its being in April or May (Rec. p. 126). With what justice is it said then that it is conclusively proved that appellee was in Providence to May 20, 1880?

As the evidence of appellee and of Miss Sampson is not afterwards withdrawn or changed as alleged error, it must be taken as true. The repairs made after May 20, 1880, sworn to by other witnesses, were not then being made when Mr. Graffam was there, if, forsooth, it is found to be true that any were then being made at all, solely on Mr. Graffam's uncertain impression and Mr. Fairfield's idea, who did not go on to the premises at all. There is much more reason to believe and find that appellee, knowing the fact, chose, under the manipulation of Mr. Brown, her counsel, to try and throw doubt upon the date by evidence of other parties as to when *they* did certain repairs, while she knew and would not herself deny the fact as sworn to by appellant Graffam and his counsel, Mr. Fairfield, and that other repairs were made prior.

The buying of the execution title of Newhall was the most natural thing in the world. How he happened to do it is fully explained by Mr. Fairfield (Rec. pp. 125–128). He had a perfect legal right to do it, and the title was not used for any wrong purpose. He took possession and disclosed his having bought the title before the year from the sale in that case had expired.

He gave no false date to the deed, as is alleged. The evidence is that the deed was first made out to N. L. Graffam, and subsequently changed to Mr. Doble, the same deed or date being retained, as the deed itself plainly shows and as the evidence proves (Rec. p. 120). Peter Graffam was only mistaken in his answer 52, p. 141.

How the alleged facts, which occurred after the right of redemption had expired, could operate to mislead appellee in her action before the time had expired, I do not see.

It does not appear that Mr. Graffam had any knowledge of re-

pairs being made before the year had expired. If he had, and supposed appellee intended to redeem, it would have had no significance. He had warned her by the interview at Melrose, and she spoke of bringing a suit, which indicated plainly to him that she knew of the sale and designed to contest it. He was stopped, and not allowed to say more; could then do nothing more than to pursue his rights. She had no right to expect anything more. If she chose to go on and make repairs after that, he could do nothing to prevent it, and was not called upon to do so, as a matter of morals or of law.

The counsel lay great stress on the inadequacy of the price paid at the sale. The full effect of that was spent in dealing with the validity of the sale. It is of some consequence in cases of sales under power of sale mortgages, or other cases where there is no right of redemption, and has its effect with other things in testing the validity of the sales. But even then and there inadequacy of price is not fraud or *per se* evidence of fraud, as held in King *v.* Bronson, 122 Mass. 122, and other high authorities elsewhere. It is made only one element when coupled with other considerations. When there is a right of redemption, it becomes of little or no consequence. As said by the Court in Pomeroy *v.* Winship, 12 Mass. 522: —

"If the price is low, . . . the creditor is injured, not the debtor, for he has the right to redeem; if it should be high, the purchaser may be injured, but not the debtor or the creditor."

See Buffum *v.* Deane, 8 Cush. 35.

There must be fraud or wrong which prevents a redemption, as said by this Court in White *v.* Crow, 110 U. S. Inadequacy of price at the sale would not so operate, but would only serve to stimulate action in that regard and promote redemption.

In Byers *v.* Surget, 19 How. 303, the Court were dealing with a claim to have the sale set aside, in a case of the grossest character. In that case the sale had besides fraudulent contrivances and other elements operating against the same.

It is undoubtedly true that on other material issues inadequacy of price affects seriously the probabilities, and is to be considered in a conflict of evidence as to essential facts involved. Here

there is no other material issue open. There is no conflict of authority, however, that inadequacy of price does not constitute fraud, or even evidence of fraud, in a sale which is legal and fair, and properly conducted otherwise.

It is so held in Kloepping *v.* Stellmacher, 21 N. J. Eq. 328, and in Wetzler *v.* Schaumann, 24 N. J. Eq. 64, and in the cases cited therein; they were cases not of redemption, but to set sales aside.

The case of Drinan *v.* Nichols, 115 Mass., was one arising on mortgage, and where the sale passed the whole property, if at all, foreclosing the right of redemption, and was a case of unfairness. The mortgagor was by law entitled to notice. In case of a foreclosure of the right of redemption from a sale on execution, the right is lost by lapse of time, and no notice is necessary. The notice referred to as regards the sale on execution is prescribed by law, and the want of proper notice then only affects the sale, and has no reference to redemption. If not given according to law, the sale would be void, and that is all. If anything required to be done afterwards affecting the rights of redemption was omitted, that would be pertinent, not otherwise.

In any event the laws of Massachusetts should govern. The cases relating to sales under a power of sale mortgage are in no wise applicable, as they affect the validity of the sale alone. Later cases uphold sales, where the power has been fairly complied with.

Webb *v.* Nightingale, 14 Allen.
King *v.* Bronson, 122 Mass.

The sale of land on execution, with a right of redemption secured, is like a sale of land for non-payment of taxes. The creditor alone buys for enough to satisfy his debt. No one else will buy, as a rule, because nothing can be made out of it. The Court, in Slater *v.* Maxwell, 6 Wall., treats inadequacy of price of no account in case of sale for non-payment of taxes.

The law regards the creditor, when purchasing, the same as any third person.

Stratford *v.* Twynam, Jacobs, Ch. R. 418.
Robinson *v.* Clarke, 7 Jones (N. C.), 562.
Nichols *v.* Ketchum, 19 Johns. 84.
Woodward *v.* Sartwell, 129 Mass. 210.

The reliance of appellee's brief seems to be solely on the supposed hardship of the case, and cites extreme cases where the Court have, on slight grounds, set sales asides, getting round the law apparently, rather than applying it. He forgets what appellee has done to injure the appellants, pecuniarily and in reputation, and that the hardship to her is the result of her own folly, gross negligence and perversity of conduct, while the hardship to appellants has been wholly caused by her own wrongful conduct and litigious character.

What is said in Cameron *v.* Adams, 31 Mich., in Weed *v.* Weed, 94 N. Y., cited above, is pertinent.

It is wrong to charge the appellants with a design to do injustice. They have hitherto done nothing but to pursue a legal remedy by steps which the debtor's persistent misconduct served to make unavoidable, unless the debts and prior costs incurred were abandoned and lost altogether. When the title was complete, the purchaser was ready to accept what would make him whole, but his counsel (Mr. Fairfield) and his client were maligned and ill-treated by the appellee's last counsel (Mr. Brown). (Rec. p. 83.)

The Court will hardly believe that Mr. Fairfield admitted that he gave no notice of the removal and storing of the furniture, when he and Mr. Lynde both swear he did so (Rec. pp. 116, 106); or that he expressed an opinion that they were liable for removing the furniture, when he had advised it as counsel and superintended the action taken; neither will they believe that he admitted that they never intended to let appellee redeem, if they could prevent it, but to clean her out. His conduct and that of his client in the various acts shown are conclusive proof that this was not so. It was the last thing likely to be confessed to the opposite counsel when threatening suits, and breathing out fire and slaughter, in a speech such as Mr. Brown says he levelled at the head of Mr. Fairfield, and at his client's through him.

It is apparent that appellee has set up a mere pretext for an excuse, and that is only ignorance of the sale, when the reverse is proved incontestibly to be the truth. Her ignorance, if it existed, is inexcusable and her neglect most gross, which, if true, bars all remedy in equity. Her brief does not attempt to exonerate her on the evidence, but lets it entirely alone, because it is not capable of

any favorable interpretation for her. What she means when she said she had no notice was evidently a direct formal notice, personally served. Ans. 40, p. 54, would so indicate.

It is only by a strong appeal to the sympathy and discretion of the Court that appellee can hope to prevail. In that regard, we may cite the remark of Swayne, J., which has been reiterated by this Court in equivalent language in many cases since then, in 2 Black. p. 606: —

"The equities in behalf of the plaintiff below are strong. We have all felt their force. Without any fault on his part, he has been divested of the title to his land. But our duty is to apply the law, not to make it. If the statute be unwise or unjust, the remedial power lies with the legislature of the State, and not with the court."

Wilde, J., in 5 Met. 123, says: "All courts of equity are invested with large discretionary powers, yet they are not to be exercised arbitrarily, but are to be governed by general rules of decision, that parties may know their equitable and common law rights."

As said by Jessel M. R., in L. R., 17 Ch. D. 412, "Justice must be administered fairly according to law, even should it bear hardly on people, as it sometimes does." If the morality of the case is to govern, and supposed rogues trounced, the Court will be careful not to mistake the party entitled to it. We trust, however, that this court will rather apply and enforce the law and rules of equity, irrespective of persons or sex. If a woman's house or the law must give way, it ought to be the former. "The Court cannot assume any censorship to condemn parties for doing what the Court cannot prevent. They can only redress wrongs within their jurisdiction."

Cameron *v.* Adams, 31 Mich.
Weed *v.* Weed, 94 N. B.

A. A. RANNEY.